RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४५] गुरुवार ते बुधवार, जानेवारी ९-१५, २०१४/पौष १९-२५, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BY THE PRESIDENT, INDUSTRIAL COURT, MAHARASHTRA, MUMBAI

Administrative Building, 1st Floor, Government Colony, Bandra (E.), Mumbai 400 051.

NOTIFICATION

Read.—High Court Bombay, Letter No. X-0202/2001, dated 26th December 2001.

No. 1400.—By virtue of the provisions contained in Regulations 11, 13, 18 and 19 of the Industrial Court Regulations framed under Bombay Industrial Relation Act, 1946, the President, Industrial Court, Maharashtra, Mumbai, hereby notifies following days to be observed as Holidays by the Labour Courts, Industrial Courts at Mumbai, Commissioner for Employee's Compensation, Mumbai and Wage Boards, Mumbai during the Year 2014 :—

HOLIDAYS 2014

Sr. No. (1)	Occasion (2)	Dates (3)	Days (4)
1	Id-E-Milad	14th January 2014	Tuesday
2	Chhatrapati Shivaji Maharaj Jayanti	19th February 2014	Wednesday
3	Holi (Second Day)	17th March 2014	Monday
4	Gudi Padwa	31st March 2014	Monday
5	Dr. Babasaheb Ambedkar Jayanti	14th April 2014	Monday
6	Good Friday	18th April 2014	Friday
7	Maharashtra Day	1st May 2014	Thursday
8	Ramzan-Id(Id-UL-Fitar) (Shaval-1)	29th July 2014	Tuesday
9	Independence Day	15th August 2014	Friday
10	Parshi New Years Day (Shenshai)	18th August 2014	Monday

HOLIDAYS 2014

(1)	(2)	(3)	(4)
11	Ganesh Chaturthi	29th August 2014	Friday
12	Anant Chaturdashi	8th September 2014	Monday
13	Mahatma Gandhi Jayanti	2nd October 2014	Thursday
14	Dashara	3rd October 2014	Friday
15	Diwali Holidays	20th to 24 th October 2014	Monday to Friday
16	Moharrum	4th November 2014	Tuesday
17	Guru Nanak Jayanti	6th November 2014	Thursday
18	Christmas	25th December 2014	Thursday

Note.—Following days have not been notified as Holidays as they fall on Sunday :—

Sr. No.	Occasion	Holidays fall on date in the year 2014.	Day
(1)	(2)	(3)	(4)
1	Republic Day	26th January 2014	Sunday
2	Mahavir Jayanti	13th April 2014	Sunday

Industrial Courts and Labour Courts in the State of Maharashtra, except Mumbai, will observe Holidays, Summer and Christmas Vacation for the Year 2014, as declared by the respective District Courts.

The dates of Summer and Christmas Vacations for the Industrial Courts at Mumbai are as under :—

Summer Vacation : From Monday, 12th May 2014 to Sunday, 8th June 2014 (Both days inclusive)

Christmas Vacation : From Monday, 25th December 2014 to Sunday, 31st December 2014 (Both days inclusive)

During the Summer and Christmas Vacations the offices of the Industrial Courts in the State of Maharashtra shall remain open from10-30 a.m. to 6-00 p.m. on working day, but no work except of an urgent nature will be admitted after 3-00 p.m.

The Judges of the Labour Courts in the State of Maharashtra and Commissioners for Employee's Compensation, Mumbai may avail two weeks concessional off during the vacations.

The Industrial Courts and Labour Courts in the State of Maharashtra and Office of the Commissioner for Employee's Compensation, Mumbai and Wage Boards, Mumbai, shall work on every Saturday except 2nd and 4th Saturday in every month in addition to other working days.

The list of holidays and vacations is likely to be modified as per the directions to be issued in near future by the Hon'ble the Supreme Court of India in Writ Petition No. 1022/89 (All India Judges' Association Vs. Union of India and Others).

VIDHYASAGAR L. KAMBLE,
President,
Industrial Court, Maharashtra Mumbai.

Mumbai,
Dated the 26th December 2013.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 628 of 1998 (Old Complaint ULP No. 109 of 1995 registered and numbered by the Industrial Court at Nashik).—Bhartiya Kamgar Sena, Shivsena Bhawan, Gadkari Chowk, Dadar, Mumbai 400 028.—*Complainant—Versus*—1. Messrs Femcare Pharma Limited, D-55, MIDC Area, Ambad, Nashik 422 010; 2. Messrs Ardra Investment Co. Pvt. Limited, D-35, MIDC, Ambad, Nashik 422 010.—*Respondents.*

In the matter of complaint of unfair labour practices under item 1(a) and (b) and 6 of Sch. II and items 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

PRESENT.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri P. S. Chavan, Advocate for Complainant.

Shri M. S. Janorkar, Advocate for Respondents.

Judgment and order

1. The Complainant union has brought this complaint against the Respondents for having committed unfair labour practices under item 1(a) and (b) and 6 of Sch. II and items 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

2. Initially, this complaint was brought against the Respondent No. 1 company. Later on, the Respondent No. 2 company came to be joined as party to the present complaint.

3. Briefly stated, the case of the Complainant union is as under :

The Respondent No. 1 company closed down its establishment on and from 17th July 1995 without any notice to its workmen and without following due process if law. It had employed about 115 workmen under various categories as given in the complaint. Since there were more than 100 workmen, the provisions under Chapter V-B of the Industrial Disputes Act apply to it. It is further contended that it was necessary on the part of the Respondent No. 1 company to obtain a prior permission from the Government before closure of its establishment. But, it has failed to obtain such permission from the Government. Therefore, the closure/lock out with effect from 17th July 1995 is illegal. It is further contended that the Respondent No. 1 company was not paying minimum wages to its workmen as required under the Minimum Wages Act. Therefore, this issue of minimum wages was pressed and on that count, it had threatened to close down its establishment. Thus, the closure is in fact illegal. So also, the closure is deemed to be illegal. It is further contended that the Respondent No. 1 company has engaged majority of the workmen under the guise of contractor, which act is in contravention of the Contract Labour (Regulation & Abolition) Act.

4. After joining the Respondent No. 2 company, the Complainant union amended its complaint and thereby contended that the Respondent No. 1 company started taking out the production in the factory premises with the help of same machineries under the licence of the Respondent No. 2, for which advertisement was published in the newspaper stating that the Respondent No. 2 has taken over the Respondent No. 1 company and invited the workmen to report for duties. In fact, it was bogus arrangement with a view to keep the workmen out of employment and to recruit fresh workmen. Thus, both the Respondents companies have denied illegal lock out in the Respondent No. 1 company.

5. The Complainant union has asked the reliefs against the Respondent No. 1 company for declaration of unfair labour practices, for restraining them from removing machineries/raw materials/finished goods, for declaration of the closure to be illegal lock out etc. By the amendment, it has also asked the reliefs against both the Respondents companies for giving them directions to allow all the workmen to report for their duties.

6. The Respondent No. 1 company has filed its written statement at Exh. C-14 through its Managing Director Shri Pophale. According to him, there is nothing on record to show that the employees of his company had authorised the Complainant union to file the present complaint. Secondly, this complaint is barred by Sec. 59 of the MRTU & PULP Act because the Complainant union has approached the Deputy Commissioner of Labour and initiated action under the provisions of the ID Act for the same reason. He has further contended that this Court cannot exercise jurisdiction under the ID Act unless the dispute between the parties is referred by the appropriate Government for adjudication. The complaint is completely devoid of material particulars and hence no notice is required to be taken of the alleged unfair labour practices. The items of unfair labour practices as alleged are not attracted to the present case, as his

company has not done any act, as alleged by the Complainant union. He has further contended that his company issued a notice dated 17th July 1995 to its employees and informed the reason of the services not required by his company. However, eligible employees of his company were assured of the payment of legal dues, notice pay and compensation as per law. Accordingly, all the employees have been paid all the legal dues and the compensation by money orders. Of course, the payment of dues is not a condition precedent to effect a closure, which is carried out in accordance with law. He has further contended that the provisions of Chapter V-B of the ID Act do not comply to his company and therefore, the question of seeking any permission from appropriate authority the Government does not arise. The strength of the employees employed by his company on an average per working day for the preceding 12 months prior to the date of the closure, was less than 100. So also, Chapter V-B of the ID Act do not apply to his company. He has further contended that his company had engaged contractors for providing certain services and for the said purpose, his company registered itself as the principal employer and the concerned contractors have been registered with appropriate authority under the Contract Labour (Regulation & Abolition) Act as the licenced contractor, if they have employed more than 20 labour contractors. He has further contended that there is no master and servant or employer and employee relationship between the labour contract labours and his company. Therefore, the Complainant union is not entitled to invoke the jurisdiction of this Court. The only provision of Sec. 25-FFA of the ID Act is relevant for the purpose of the present case. He has further contended that his company sustained a loss of Rs. 46.42 lacks during the period from 1st April 1995 to 31st December, 1995. Therefore, the provisions of the Minimum Wages Act and the Govt. Notifications could not apply to the present case. Thus, his company was not in a position to pay the statutory minimum wages to its employees. He has further contended that the action of closing down the undertaking and discontinuing the manufacturing activities on account of its inability to pay the statutory minimum wages is justifiable. Lastly, it is prayed for dismissal of the present complaint.

7. *Vide* Exh. C-15, the Respondent No. 2 company has filed its written statement and thereby resisted the claim of the Complainant union. According to it, it had taken over the Management of the Respondent No. 1 company as per Sec. 25-FF of the ID Act on certain terms and conditions as per the agreement dated 20th October 1995. Later on, it was found that it was enable to execute the terms and conditions of the said agreement and hence it terminated the said agreement with the Respondent No. 1 company *vide* notice dated 3rd April 1996. Thereafter, it handed over the possession of the premises and withdraw its employees from the premises of the Respondent No. 1 company with effect from 18th April, 1996. Since then, it has no connection with the Respondent company. Therefore, the Complainant union has no right to ask for any relief against it. It is further contended that the employees of the Respondent No. 1 company have not authorised the Complainant union to file this complaint and there is no cause of action to this complaint. The complaint also suffers by Sec. 59 of the MRTU & PULP Act. This Court has also no jurisdiction to try and entertain the present complaint, unless referred by them appropriate Government for adjudication. Besides the above contentions, it has adopted the submissions made in the written statement filed by the Respondent No. 1 company. Lastly, it has prayed for dismissal of the present complaint with costs.

8. On the pleading of both parties and the documents, produced by them, the following issues are framed at Exh. O - and I have recorded my findings thereon for the reasons stated below :—

Issues	*Findings*
(*i*) Whether the present complaint is maintainable according to law ?	No.
(*ii*) Whether it is proved that the Respondent is engaged in unfair labour practices under item 1(a), (b) and 6 of Sch. II and under items 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971 ?	Since the complaint is not maintainable this issue cannot be decided.
(*iii*) Whether the Complainant is entitled to any relief/reliefs ?	No.
(*iv*) What order ?	As per the order below.

Reasons

9. Before considering the evidence led by both the parties, it is necessary to make it clear that initially this complaint came to be presented in the Industrial Court at Nashik and it was numbered as the Complaint (ULP) No. 109 of 1995. Later on, this complaint came to be transferred to this Industrial Court at the instance of the Respondent No. 1 company, and them this Court re-registered and re-numbered the present complaint in the year 1998, as Complaint (ULP) No. 628 of 1998.

10. In support of its case, the Complainant union has examined 2 witnesses *viz.* Shrikrishna Ganpat Sanglekar and Mrs. Sangeeta Nimba Khairnar. On the other hand, the Respondents have examined 3 witnesses *viz.* (1) Shamsunder J. Narayan Bohara; (2) Vijayendra Dinkar Nikam and (3) Arun Yeshwant Kawale. Besides the above oral evidence, both parties have relied on some documentary evidence, which can be referred hereinafter at the appropriate places.

11. It is the case of the Respondent No. 1 company that it had engaged the contractors for providing certain services and for the said purpose, it is registered as the principal employer. Like wise, the concerned contractors are also registered themselves as the licenced contractor under the Contract Labour Act. It is further case of the Respondent company that there is no relationship between it and the concerned employees as the master and servants or employer and employees. The Respondent No. 2 has adopted the same case of the Respondent No. 1. Thus, the Respondent No. 1 has raised the dispute about relationship between it and the concerned employees/labour contractors as the employer and employees, by its written statement.

12. The evidence of Mr. K. G. Sanglekar (UW-1) shows that he was issued with the letter by the Respondent company. After one year of his joining, and in the said letter, he was designated as the operator. But the said letter is not produced by this witness or by the Complainant union to show that the Respondent company employed him by giving him any such letter. In the cross examination, he has admitted many things that he and other 5 workmen working with the Respondent company at Mumbai factory were brought to the Nashik factory by the Respondent company. Further, he has admitted that the workers working with the Respondent company *i.e.* 120 workers were shown to be working with the Respondent contractors. Before that, he has stated that there were 120 workmen employed by the Respondent company, including the officers. He has further stated that there were 3 contractors *viz.* G. S. Patil; M/s. Sanjay Services and Mr. Bohra. Thus from the above evidence and the admission, it appears that this witness has claimed that he was given a letter designating him as the operator, but there was no evidence to show that he was issued such letter. Further, it appears that all the employees referred by this witness were working with the contractors. The evidence of another witness Sangita N. Khairnar (UW2) has stated that the Respondent company from 25th May 1994 in the Packaging Department. She has further stated that she was taken on duty through one Mr. Kharole. She had made application for employment and she had received the interview letter on the letterhead of the Respondent company. As per the said letter, she was interviewed and then she was appointed without giving her any appointment letter. However, she has admitted in her cross examination that she has no evidence of the interview letter. Further, she has admitted that she was working with Mr. G. S. Patil, who was making payment of her wages on the premises of the Respondent company. Further, she had again made clear that Mr. G. S. Patil was paying her wages as she was working with him. Thus from the evidence of both the witnesses it appears that there is substance in the objection raised by the Respondent company. It further appears that both the witnesses alongwith others, were working under the labour contractors in the Respondent company.

13. The learned Advocate for the Respondent company has submitted that the Respondent company has disputed that the relationship between it and the concerned employees as the employer and employees and, therefore, this Court has no jurisdiction to entertain this complaint. In support of his submission, he has relied on the several cases, including the famous case of Kalyani Steel Limited and other one famous case of Cipla Limited. First is between General Labour Union (Red. Flag) Bombay *Vs.* Ahmedabad Mfg. & Calico Printing Co. Ltd. & Others, reported in *1995-SUPP-(1)-SCC-175* wherein, the employer had denied his relationship with the concerned employees as employer and employees. On the facts, Their Lordships have held that in such circumstance raising an industrial dispute and establishing therein that the workmen in question were employees of that employer held condition precedent for maintaining

such complaints. He has further relied on the case of Vividh Kamgar Sabha Vs. Kalyani Steel Limited and others, reported in *2001 I CLR 523 (SC).* Wherein, Their Lordships have held in clear terms that it is only after the status as a workman is established in an appropriate forum that the complaint could be filed under the provisions of the MRTU & PULP Act. It is further held therein that the issue of jurisdiction of the Industrial Court to entertain the complaint only in cases where there exists or existed employer employee relationship between the parties. He has further relied on the case of Cipla Limited *Vs.* Maharashtra General Kamgar Union, reported in *2000 I CLR 754 (SC).* It is held by Their Lordships therein that the object of the said enactment (MRTU & PULP Act) is amongst other aspects enforcing the provisions relating to the unfair labour practices. So, unless it is undisputed or undisputable that there is employer employee relationship between the parties, the question of unfair labour practice cannot be enquired into at all. He has also relied on the case of Indian Steamless Metal Tubes Limited *Vs.* S. R. Iwale & others, reported in *2001 III CLR 728 (Bom)* (Hon. Justice Khandeparkar). On relying the decisions of the Honourable Supreme Court in Kalyani Steel Ltd. and Cipla Ltd. case, Their Lordships have held that the question of framing a preliminary issue deciding the point of jurisdiction does not arise, where the relationship of employer employee is disputed or disputable. It is further held that the complaint of unfair labour practices is not maintainable and the Industrial Court has no jurisdiction to entertain such complaint, where the status of employer employee relationship is disputed. He has also relied on the case of Hindustan Coca Cola Bottling S/W Pvt. Ltd. & Others *Vs.* Bhartiya Kamgar Sena & Others reported in Appeal No. 782 of 2001 in Writ Petition No. 927 of 2001 decided on 12th October 2001, by the Division Bench of the Bombay High Court. On relying on the observations of the Supreme Court in that cases, including the Cipla case, Their Lordships have held in the said case that the Act in a case where the employer had never recognised the workmen as his employee and throughout treated these persons as employees of the contractor, the Court constituted under Sec. 28 of the MRTU & PULP Act will have no jurisdiction to entertain the complaint, unless the status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act, 1947. As discussed above, the relationship in the present case between the parties as employer-employee has been disputed. If it is so, the present complaint under the MRTU & PULP Act would not be maintainable and this Court will have no jurisdiction to entertain such complaint, unless the relationship of employer-employee is established by the competent forum under the Industrial Disputes Act, 1947.

14. Even if it is presumed that the complaint is maintainable and this Court has jurisdiction to entertain the same, the next question arises as to whether the provisions under Chapter V-B of the ID Act will apply to the present case/concerned employees. Sec. 25-K of the Industrial Disputes Act lays down that the provisions of this Chapter shall apply to industrial establishment (not being an establishment of a seasonal character or in which the work is performed only intermittantly) in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. Admittedly, the Respondent company was not a seasonal character or was working intermittantly. So considering the provisions of Sec. 25-K of the ID Act, the question arises as to whether the Chapter V-B of the ID Act applies to it. On this point, the evidence of Mr. K. G. Sanglekar shows that there were 120 workers with the Respondent company, when he started working with it in the years 1989. During his cross examination, he has made is clear that these 120 employees included the officers. Further, he has stated that these 120 workers were shown to be working with the contractors. Further, he has stated that out of 120 workers, 24 employees were from non working categories. Again, he has further stated that there were more than 120 workers working with the Respondent company during 12 calender months preceding the month of July, 1993. From all these facts, it appears that there were more than 100 workmen working with the Respondent company, but they were not directly employed by the Respondent company. These 120 workers also included the officers/24 employees in non working categories. The evidence of another witness Sangeeta N. Khairnar shows that there were 120 workers working with the Respondent company, when she started working in the Respondent company. However, she has stated in her cross examination that she cannot tell whether 100 or 120 workers were working with the Respondent company, but there were 100 or 120 workers working with her. She has also admitted that she was working with the contractor Mr. G. S. Patil who was paying her wages. She has admitted that after the lock out effected from 17th July 1995, there were about 50 employees working in the Respondent company, Further, she has stated that the employees included the officers, clerical staff,

supervisors etc. of the Respondent company. Thus from the evidence of both these witnesses, it shows that none could give the correct data of the employees employed by the Respondent company. Therefore, it is difficult to ascertain as to whether the employees employed by the Respondent company were not less than 100 employees during the period of 12 preceding months.

15. The Respondent company has examined 3 witnesses. Out of them, 2 are the labour contractors/contractor's manager and the third is the then Personnel Manager of the Respondent company. The evidence of the first witness Shri S. J. Bohara shows that he had a contract for house keeping/saf safai with the Respondent No.1 company and he carried out the contract work for abour 7-8 years for which he had engaged 12-13 workers. The second witness Shri B. D. Nikam has stated that he is working with M/s. Sanjay Services, which is doing labour contract business. His firm was having a contract with the Respondent No. 1 company and his firm started working from 1st September, 1994 and the said contract work came to an end on 17th July 1995. Thereafter, his firm paid all the dues to the workers engaged by them. His further evidence shows that his firm supplied 42 workers to the Respondent No.1 company for house keeping. Further, he has stated that his firm is the registered contractor. The evidence of the third witness Shri A. Y. Kawale shows that he was working as the Personnel Officer of the Respondent No. 1 company. There were only 5 employees in the Respondent company and the company paid them the compensation. His further evidence shows that at the time of closure. There were 3-4 contractors working in the Respondent company, who had undertaken the work of house keeping, garden, security, loading, unloading, packing etc. For that, purpose they had engaged the employees. Thus, from the evidence, it appears that all the employees, except 5 employees, were working under the contractors.

16. The evidence of the Personnel Officer Shri A. Y. Kawale further shows that after closure of the company, the company paid legal dues to 5 employees. But these 5 employees made the complaints against the Respondent company in the Labour Court at Nashik. This fact shows that these 5 employees, who were working under the contractors, have filed their separate complaints against their retrenchment before the Labour Court and the same are pending before the said Labour Court.

17. From the above discussions, it appears that the employees, other than 5 employees, were working under the contractors and the Respondent No.1 company, therefore, disputed its relationship with them as employer and employees. Therefore, in view of the observations in the cases cited by the learned Advocate for the Respondent No. 1 company, this Court has no jurisdiction to entertain the present complaint and such complaint is not maintainable, unless the relationship of employer and employee is established by the competent forum under the Industrial Disputes Act, So far as the 5 employees are concerned, they have filed their separate complaints before the Labour Court against their retrenchment.

18. The Complainant union has asked for the reliefs in terms of the prayer in the complaint. Since the present complaint is not maintainable and this Court has no jurisdiction to entertain such complaint, this Court is not authorised to grant any such relief, including the relief of declaration of unfair labour practice. In the result, the Issues Nos. (1 to 3) are hereby decided accordingly. With this, I proceed to pass the following order.

Order

Complaint is hereby dismissed, with no order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 11th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 27th March 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 333 of 1993.—Tata Consulting Employees' Union, C/o. Shri Prakash T. Tawade, 9, Guru Omkar Co-op. Housing Society, Wamanrao Sawant Road, Maratha Colony, Dahisar (E), Mumbai 400 068.—*Complainant—Versus*—Tata Consulting Engineers, (A Division of Tata Sons Ltd.) Matulya Centre, Lower Parel, Bombay and 29 others.—*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri Shivdasani, Advocate for the Complainant;

Shri J. L. Samant, Advocate for Respondents.

Order Below Exhibit c-31

(Dictated in Open Court)

1. This is an application filed by TCE Consulting Engineers Limited (hereinafter called as the "Respondent" for the sake of brevity) praying therein that the complaint be disposed of being not maintainable. The facts which gave rise to the present litigation can be stated in nutshell as below.

2. The Complainant union filed a complaint posing that the persons listed in Annexure 'A' to the complaint were not classified as permanent employees of the company and thereafter alleged that the Respondents have followed unfair labour practices against the employees of the Complainant. The Respondents in their affidavit-in-reply dated 30th March 1993 have categorically disputed the relations with the employees under Annexure 'A'. It is pointed out that these are not the employees who are employed by the company but those are the employees of the contractors. Therefore, in view of the ratio laid down by the Honourable Supreme Court in a case of Kalyani Steels Ltd. and CIPLA Ltd. followed by the Honourable Division Bench of our High Court in a case of Hindustan Coca Cola Limited, the present complaint is not maintainable. Hence, be dismissed.

3. The application has been strongly objected by the Complainant Union. It is pointed out that the evidence of the Complainant is complete and trial be allowed to be completed. It is also pointed out that this Court may please to frame the issue regarding the maintainability of the complaint and the same may be tried with other issues. With this and other grounds, it is prayed that the application be dismissed with costs.

4. On the above averments, following point arises for my determination :

Issues	*Findings*
(*i*) Whether the complaint is maintainable in its present form ?	Negative.
(*ii*) What order ?	As per final order

Reasons

5. On a bare look to the pleadings of the complaint, it is very clear that the allegations against the Respondents are under items 6 and 9 of Schedule IV of the MRTU & PULP Act. Item 6 deals with depriving the employees by keeping them Badlis for years together and denying them the previlege of permanent employees while item 9 deals with failure to implement, settlement, award or agreement. The body of the complaint discloses that these Complainants appointed in various categories as described in para 3(d). The nature of work which the company is getting from these employees is disclosed in para 3(f). The list Annexure 'A' Exh. U-18 discloses the various categories also. It is the contention of the Complainant that all these workers are doing the job of a permanent workmen or in other words, these workers are doing the same work which the permanent employees are doing. Therefore, they cannot be deprived of from the benefits and privileges as being awarded to the employees in permanent categories. To retaliate these averments, the Respondent No. 19 has filed their written statement

vide Exh. U-27 and points out in para 3 that the Respondent No. 19 has been appointed with the Respondent No. 1 company for providing the and has signed the contract with the Respondent in 1990 for providing in house Xeroxing services and accordingly, the Respondent No. 19 has appointed its own workmen who go to the office of the Respondent company *i.e.* Respondent No. 1 during the commencement of office hours and operates Xerox machine provided by Respondent No. 19. Those workmen who are carrying out the services are directly under the supervision and control of Respondent No. 19. Those are being trained by Respondent No. 19 for operating the Xerox machines and Respondent No. 19 is responsible for providing better xerox copies to the Respondent company. On these crutial submissions on behalf of the Respondent No. 19, the facts clearly emerge that the total responsibility of the employees dealing with the xerox machine has been accepted by the Respondent No. 19 and there is no sense of any sort that these are the employees who have become members of Respondent No. 1 company. Since on the very inception of the contract, the question of relations interse has been emphasised and, therefore, on the face of record, the direct relations of Respondent No. 1 with these employees have been categorised.

6. So far as Respondent No. 22 is concerned, it has filed its written statement *vide* Exh. C-21. It specifically provides that the services of the employees are engaged by the Respondent No. 1 for the purpose of providing courier services and for carrying out the services, the employees are being appointed by these Respondents who are directly under the supervision and control of Respondent No. 22. Therefore, the other Respondents who are having such relations with these employees, the question of Respondent No. 1 will have to be construed by referring to the written statement of Respondent No. 1.

7. The Respondent No. 1 filed written statement at Exh. C-1 and have categorically stated that the services of the employees are being availed of by the Respondent through the contractors with whom the Respondent No. 1 has entered into a contract. The contract registered with these contractors is reflecting a positive fact of engaging the employees on behalf of those contractors. This fact postulates that these contractors have not kept any burden, responsibility or concern of these employees on the Respondent No. 1 so far as service conditions are concerned. In other words, the service conditions of the persons employed by these contractors and the service conditions of the employees of directly appointed by the Respondent No. 1 are not treated at bar. Obviously, a question of having a relations of employer and employee with these employees and Respondent No. 1 will not arise besides should not arise.

8. In the above context, the fact as emerges from the pleadings of the parties, it clearly visualises that the Respondent No. 1 is standing on its own footing having its own workforce and the employees in Annexure 'A' are governed under the service conditions provided to the staff members by the respective contractors who are other Respondents in the complaint. Therefore, two sets of workers are admittedly, there in the establishment but the question of employees who are being sent by these contractors to the Respondent No. 1 company will have no bearing on the service conditions of the Respondent No.1 nor they will have any bearing so far as treating them as employees of Respondent No. 1. The pleading itself is very clear saying that the contractors are having various contracts with other companies and such contract work is being provided under the purview of the contract entered into. This fact clearly specifies that the contractors are not bound to send particular employee to the Respondent No. 1 company but the said contractor can send any of the employee knowing the work to any of the company with which the contract is entered into. Therefore, if at all the contractor has sent an employee to a concerned company and the said person remained to be in the work in the said company, will not necessary change his status. The word status connects with the status of the employee of the company or the employee of the contractor. These employees admittedly, are of the contractors. An unequivocable statement has been made by the contractors in their respective written statement along with written statement of Respondent No. 1 that these are the employees of the contractors. In such situation, the claim advanced by the employees for treating them at par under this complaint is in dispute.

9. The proceedings under MRTU & PULP Act are admittedly in summary way. While dealing with such proceeding in summary way, the question of adjudicating upon the relations in between the employer and employee is not contemplated. The process of adjudication can only be under the Central Act and before the appropriate forum as contemplated under the Central Act. Whenever the relations interse are disputed or disputable, the said question cannot be looked into in the complaint filed under MRTU & PULP Act and the Court dealing with such complaint will have no jurisdiction to look into such aspect. The basis of filing the complaint alleging against the employer that he has followed unfair labour practice is that of the relations unless an employee establishes his relation as an employee with the employer against whom the allegations are made, he cannot maintain a complaint. Therefore, on fact itself, the complaint now in the given circumstances does not remain to be in force irrespective of the fact that the evidence as has already been recorded or not without referring to the issue raised.

10. Learned Advocate Shri Shivdasani has brought my attention towards the case of *D. P. Maheshwari* Vs. *Delhi Administration and others, 1984 F.J.R. (63) 333 Supreme Court.* Honourable Their Lordships have ruled to curtail the policy of framing preliminary issue. The eloquent observation lays down that :

> "There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal, that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes, where delay may lead to misery and jeopardies industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues."

Having regard to these observations, the basic question is of framing a preliminary issue if taken into consideration, Honourable Supreme Court has in recent observation have expressed that even if the Court sitting under the purview of the MRTU & PULP Act, we have no jurisdiction to frame an issue even to find out the relations of employer and employee in between the parties to the litigation. Once this position is clear obviously there shall be no question of framing any preliminary issue and postponing framing of other issues. The observations of Honourable Apex Court are subsequent to that of observation of *D. P. Maheshwari* Vs. *Delhi Administraiton, 1984, F.J.R. (63) 333 (Supra),* those are required to be followed and respected.

11. Learned Advocate Shri Shivdasani has further relied on the observation in a case of *National Council for Cement and Building Materials* Vs. *State of Haryana and others, 1996-II-LLN-49 Supreme Court* wherein also, Honourable Apex Court has contemned the practice of framing preliminary issues.

12. As against this, Honourable Supreme Court in a case of *CIPLA Ltd.* Vs. *Maharashtra General Kamgar Union, 2001-I-CLR-754* has specifically observed referring to all previous cases right from *Gujrat Electricity Board* Vs. *Hind Mazdoor Sabha, 1995(5) SCC-27* and ultimately ruled that Section 32 gives a power to decide all the matters arising out of any application or complaint referred to the Court but the said Section would not enlarge the jurisdiction of the Court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act, the Industrial Tribunal or the Labour Court has no jurisdiciton to deal with particular aspect of the matter, Section 32 does not give such power to it. In the case in hand before us, whether the workman can be stated to be the workmen of the Appellant establishment or not, it must be held that the contract between the Appellant and the Second Respondent is a camouflage and bogus and upon such decision, it can be held the workman in question is an employee of Appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. In view of the above observation, the fact matrix of the case clearly envisaged that the employees are not treated as employees of the Respondent No. 1. The other Respondents have accepted

their relations with those employees. Therefore, whether the contract registered in between the other Respondents and the Respondent No. 1, whether was a camouflage or not can only be considered by an appropriate authority under the Central Act and not by this Court sitting under the purview of the MRTU & PULP Act. The same views are expressed in by Honourbale Apex Court in a case of *Vividh Kamgar Sabha* Vs. *Kalvani Steels Ltd., 2001-I-CLR-532.* It was decided in January, 2001 while the decision in M/s. Cipla Ltd. came in February, 2001. Even though the earlier decision is taken into consideration, it renders the same views as Honourable Apex Court has observed that the provisions of MRTU & PULP Act can only be enforced by person who admittedly, are workman. If there is a dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before appropriate forum. It is only after the status as the workman is established in an appropriate forum that a complaint could be made under the provisions of MRTU & PULP Act. Having regard to these aspects, it is clear in the given circumstances that the relations being in dispute, the question cannot be gone into before this Court under the forum of MRTU & PULP Act.

13. Learned Advocate Shri Shivdasani has further pointed out that the issue referred to in M/s. Cipla Ltd. and Kalyani Steels Ltd. has been referred to a larger bench of Honourable Apex Court and the issue is still under consideration. He has produced the order by referring the matter to the larger bench only. In my opinion, since the decision given by the Apex Court is still in force and not yet being interfered by the large bench or a constitutional bench, the validity and legal force of these findings shall remain in force till then. Therefore, no longer the decision of Honourable Apex Court is contemplating that the disputable question of relations between the employer and employee is to be referred to the appropriate forum under the Central Act. The question if adjudicating that the dispute under the forum of MRTU & PULP Act will definitely not arise. In other words, this Court will not accrue any jurisdiction so far as the relations of the employees in Annexure with the Respondent No. 1 company. In the result, the complaint, therefore, cannot be held to be maintainable in the absence of proper adjudication by appropriate forum under the Central Act. Therefore, I have given my finding to the point accordingly and pass following order :—

Order

(*i*) The application Exh. C-31 is hereby allowed.

(*ii*) The complaint is not maintainable.

Costs to be costs in cause.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 13th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 27th March 2002.

BEFORE SHRI R. U. INGULE, MEMBER

INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

Revision Application (ULP) No. 148 of 2001.—Sun-N-Sand Hotel Pvt. Ltd., 39, Juhu Beach, Juhu, Mumbai 400 049.—Applicant—Versus—(1) General Employees Association, Tel Rasayan Bhavan, Tilak Road, Dadar, Mumbai 400 014; (2) Presiding Officer, 12th Labour Court, Mumbai.—Respondents.

AND

Revision Application (ULP) No. 156 of 2001.—General Emloyees Association, Mumbai 400 014.—Applicant—Versus—Sun-N-Sand Hotel Pvt. Ltd., and 2 others.—Respondents.

In the matter of Revision under Section 44 of the MRTU & PULP Act, 1971.

CORAM.— Shri R. U. Ingule, Member.

Appearances.— Shri K. T. Rai, learned Advocate for the Hotel.

Shri Sandeep Chaubal, learned Advocate for the employee.

Common order

(*13th March 2002*)

1. These counter Revision Petitions have been preferred taking an exception to the order dated 8th August 2001 passed by the learned Labour Court in Complaint (ULP) No. 223/95 setting aside the dismissal order passed by the Management of the Hotel served on the delinquent employee, and directing to reinstate him without backwages and continuity of service.

2. As in both these counter Revision Petitions a common order dated 8th August 2001 passed by the learned Labour Court has been challenged, I therefore find it expendient to dispose of these counter Petitions by passing the instant order. For the sake of convenience and brevity, the dismissed employee, hereinafter to be called as 'Respondent employee' and the Sun-N-Sand Hotel Pvt. Ltd. as 'Petitioner Hotel'.

3. In brief, the facts giving rise to filing of the complaint (ULP) No. 223/95 which is the subject matter of the Revision Petitions under consideration, are as under :

That the Petitioner Hotel has been a 5-Star Hotel, employing about 158 permanent workmen. The Respondent employee was working as a 'Steward' from last 10 to 12 years and has been dismissed from the employment *w.e.f.* 1st April 1995 after holding departmental enquiry for the charges imputed to him for riotous, disorderly and indecent behaviour committed within the premises of the Petitioner Hotel and wilful insubordination and disobedience of the lawful order given by the superiors and indulgence into acts subversive to the discipline. The Respondent employee was a local committee member of the Union. The Petitioner Hotel was not happy with the change of the Union and did not like the activities undertaken by the General Employees Association and that by the Respondent employee. It is, therefore, fabricated charge sheet has been issued to the delinquent employee. The Petitioner Hotel has chargesheeted and suspended the Respondent employee by its letter dated 13th April 1994 and later on dismissed his services, by indulging into unfair labour practices prescribed under item 1 (a), (b), (d), (f) and (g) of Sch. IV of the MRTU & PULP Act, 1971 (for short, (MRTU & PULP Act). The departmental enquiry was conducted *exparte* and was closed abruptly. There has been violation to the principles of natural justice in the conduct of the departmental enquiry. The Enquiry Officer was a biased person. The order of dismissal issued to the Respondent employee has been shockingly disproportionate, under the colourable exercise of employer's right, with *malafide* intention and to victimise him for his union activities. The Punishing Authority has not taken into consideration the unblemished past service record of the Respondent employee and proceeded to award extreme punishment of dismissal. Hence, a prayer for reinstatement with continuity of service and payment of backwages.

4. The Petitioner Hotel by filing a Written Statement at Exh. C-2 in the complaint had contested the complaint *inter-alia* on the grounds that the departmental enquiry conducted into the charge-sheet served on the Respondent employee was fair and proper and the findings rendered by the Enquiry Officer were not perverse. The dismissal of the Respondent employee was a proper and just punishment awarded for his commission of misconduct, grave in nature. The Petitioner Hotel being a 5-Star Hotel is required to keep and maintain high quality and degree of personalised services, hygiene, peace and tranquility in and around the Hotel. The Respondent Hotel was indulged into gravious misconducts *i.e.* riotous and disorderly and indecent behaviour and insubordination for which he was charge-sheeted and suspended pending the enquiry. In the departmental enquiry completed with compliances to principles of natural justice, the charges were duly proved on the basis of the evidence brought before the Enquiry Officer and taking into consideration the gravity of the misconduct committed by him was dismissed from the employment. Therefore no adoption of unfair labour practices.

5. The learned Labour Court in the trial of the Complaint (ULP) No. 223/95 has passed the final order on 8th August 2001 quashing and setting aside the dismissal order passed by the Petitioner Hotel against the Respondent employee and there by directing to reinstate him without any benefit of backwages and continuity of service. The order of reinstatement has been challenged in the Revision Petition No. 148/2001 by the Petitioner Hotel being perverse and bad-in-law. While the Respondent employee by filing Revision Petition No. 156/2001 has challenged the part of the order not awarding him payment of backwages and continuity of service being unsustainable in law, as quashing and setting aside the dismissal order should have been followed with the payment of backwages and continuity of service. This order dated 8th August 2001 thus has been a subject matter of both these Revision Petitions being perverse and bad-in-law and challenged under Section 44 of the MRTU & PULP Act.

6. In the aforesaid rival contentions, following points arise for my determination and my findings thereon, for the reasons given below therein, are as under :—

Points	*Findings*
(*i*) Whether the impugned order dated 8th August 2001 passed by the learned Labour Court in Complaint (ULP) No. 223/95 is liable to be interfered with, as envisaged under Section 44 of the MRTU & PULP Act, as prayed by the parties to the litigation ?	Yes.
(*ii*) What order ?	Please, see final order.

Reasons

7. I have heard the learned Advocate Shri Rai K. T. for the Petitioner Hotel and learned Advocate Shri Sandeep Chaubal for the Respondent employee at length.

8. I may observe that the principles of law in regard to restricted jurisdiction this Court is having under Section 44 of the MRTU & PULP Act, are by now well established. In view of these principles of law, this Court cannot sit in judgment as an Appellate Court, over the findings rendered by the learned trial Court. As such, unless the impugned order is perverse or grossly bad-in-law, the same cannot be interfered with, under such restricted revisional jurisdiction, contemplated under Section 44.

9. Now, I proceed to ascertain whether the impugned order is liable to be interfered with, as contended by either party to the litigation. Awarding reinstatement to the employee working in the post of 'Steward' (hereinafter to be referred as 'Respondent employee') has aggrieved the Sun-N-Sand Hotel (hereinafter to be referred to as 'Petitioner Hotel') and denial to award backwages and continuity in service has aggrieved the Respondent employee. Hence counter Revision Petitions under consideration.

10. At the outset, I observe that on account of ignoring the elementary and basic principles of law required to be strictly observed while deciding the complaint moved under Section 28 of the MRTU & PULP Act, the learned Labour Court has proceeded to pass a totally perverse and grossly erroneous impugned order under consideration, occurring a grave injustice to the Petitioner Hotel. In my considered view, Section 30 conferring powers on the Labour and Industrial Court, obligates the Courts under clause (*a*), to declare the adoption of unfair labour practice on the part of the Respondent, followed with a direction envisaged under clause (*b*) to all concerned persons to cease and desist therefrom and taking affirmative action, which includes awarding reinstatement with or without backwages the payment of reasonable compensation, as the case may be. This vital aspect of law in my considered view is not directory but mandatory in nature and the impugned order is sadly lacking the same. A bare perusal of impugned order manifest that the learned Labour Court has unduly has ten to take affirmative action by way of awarding reinstatement without backwages and continuity in service, without catring to declare unfair labour practice indulged into, by the Petitioner Hotel.

11. Besides it, on the fact of other tenets of law, unless the Court finds a fact of indulgence of the Respondent into the unfair labour practices complained of, it does not get any jurisdiction to pass any operative order. Thirdly the Complainant is always under obligation to prove the unfair labour practices complained of, to its' hilt. In my considered view, a bare perusal of the impugned order manifest that the same passed by the learned Labour Court, falling a foul on the touch-stone provided by the principles of law adverted to above, giving warrant and justification to this Court, to interfere with the same under Section 44 of the MRTU & PULP Act.

12. An attempt has been made by learned Advocate Shri Sandeep Choubal for the Respondent employee to contend that the Respondent employee has not raised any exception in regard to fairness and properness in conduct of departmental enquiry and rendering non-perverse finding by the Enquiry Officer. Accordingly observed by the learned Labour Court while deciding Issue Nos. 1 and 2 in the impugned order. Therefore what had fallen for consideration of the learned Labour Court was the unfair labour practice prescribed under Clause (*a*) *i.e.* dismissing the employee with victimisation and under Clause (*g*) for misconduct of minor and technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment. While buttressing his contentions, the learned Advocate Shri Sandeep Chaubal has adverted to the findings rendered by the learned Labour Court in various paragraph No. 12 onwards, observing the punishment of dismissal awarded to the Respondent employee being shockingly disproportionate one, there by amounts to indulgance of the Petitioner Hotel into the unfair labour practice under clause (*a*) and (*g*) of item 1 of Sch. IV. In my view, this very submission vividly manifest that non-observance of unfair labour practice on the part of Petitioner Hotel, in terms of Clause number and text of concerned Clauses under item 1, has made the learned Advocate Shri Sandeep Chaubal to gather and decipher from general and sweeping observations of the learned Labour Court, as to which unfair labour practice it was intending to hold, which of course not congruous and compatible with the concerned principles of law.

13. The decision of the Full Bench of the Honourable Supreme Court in a case of Colour-Chem Ltd. *versus* A. L. Alaspurkar *(1998 I CLR p/638)* lays down in an unequivocal expressions that the concept of "shockingly disproportionate punishment" is required to be considered while dealing with clause (*g*), as well as in respect of legal victimisation under clause (*a*) of item 1 of Sch. IV. On plain reading of a lucid and elequent observations rendered by the Honourable Supreme Court in the said case of Colour-Chem Ltd. (supra), it is per-se discernable and can be

perceived that in two different and distinct circumstances in respect of nature of misconduct, the concept of "shockingly disproportionate punishment" requires to be taken into consideration under clause (*a*) and (*g*) of item 1. It is vividly manifest on the very face of the ratio handed down by the Honourable Supreme Court that the allegation of unfair labour practice under clause (*a*) in regard to "legal victimisation" and that under Clause (*g*) cannot co-exist, as urged by learned Advocate Shri Rai K. T. for the Petitioner Hotel. However, to my surprise, pressing into service the very citation in the case of Colour Chem. Ltd. (supra), an elaborate argument was advanced on behalf of the Respondent employee that though specific clauses viz. (*a*) and (*g*) have not been mentioned by the learned Labour Court, the entire findings have been rendered observing unfair labour practices prescribed there under. Therefore mere non-mention of such Clause Nos. (*a*) and (*g*) does not render the impugned order bad-in-law.

14. Now I proceed to observe how the said argument does not have any leg to stand on. On adverting to the observations of the Honourable Supreme Court in paragraph 11 on page 643, I observe that the moot question before their lordships was whether on the express language of Clause (*g*), the said provision got attracted, in the matter on its hand. The Lordships further observed that on conjoint reading of different sub-parts of the clause (*g*) leaves no room for doubt that it deals with unfair labour practice dealing with misconduct of minor and technical in nature, and it is not possible to agree with the contention of learned Senior Counsel for the Respondent workmen that the said clause would also cover even major misconducts, if for such misconduct the order of discharge or dismissal, are passed by the employer without having regard to the nature of the particular misconduct or the past record of the employees an if under these circumstances it is found by the Court that the punishment imposed is shockingly disproportionate one. I observe that the Honourable Supreme Court thereafter elaborately dealing with the proper construction of Clause (*g*) reached to a conclusion, that the sub-parts of Clause (*g*) have to be read conjunctively and any disjunctively reading would lead to very anomalous situation. Therefore, once the Clause (*g*) deals with the topic of misconduct of a minor or technical character, it is difficult to appreciate how the said clause can be construed as covering also major misconducts for which there is not even a whisper in the said clause. In my view, therefore, in view of these settled principles of law, the Clause (*g*) deals with only misconduct of minor or technical in nature in the circumstances prescribed therein and by stretch of no imagination, the misconduct of major in nature can be considered under said clause (*g*), as canvassed by learned Advocate Shri Sandeep Chaubal.

15. On the backdrop of this law position, a bare perusal of the impugned order under consideration manifest on page No. 15 that the learned Labour Court proceeded to hold the misconduct committed by the Respondent employee being severe in nature and the same being serious nature of employment misconduct. Placing a reliance on the case of Basu Deba Das *versus* M. R. Bhope & another *(1993 II CLR p/279)*, the learned Labour Court on page No. 16 of the impugned order, reiterated its conclusion as to misconduct committed by the Respondent employee being major and severe in nature. In my considered view, such a conclusion drawn by the learned Labour Court, puts the matter beyond doubt that the unfair labour practice, observed on the part of the Petitioner Hotel, has certainly cannot be that under clause (*g*) of item 1 of Sch. IV. Accordingly I uphold the argument canvassed by learned Advocate Shri Rai K. T., on this count.

16. Now what is left for this Court, is to ascertain whether unfair labour practices prescribed under clause (*a*), observed on the part of Petitioner Hotel by the learned Labour Court, suffers from any element of perversity. Their Lordships of the Supreme Court in the case of Colour Chem Ltd. (supra) has elaborately expounded the concept of legal victimisation,

adverting to the decision in the case of Hind Construction & Engg. Co. Ltd. *versus* their workmen *(1995 (2) SCR p/85).* On page No. 646 in paragraph 14, it has been *interalia* observed by the Honourable Supreme Court, that if punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and that the past service record of the delinquent, is such as no reasonable employer could ever impose in like circumstances then that would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation, independent of factual victimisation and that has been covered under clause (*a*) of item 1 of Sch. IV. Not in the arena of dispute, that the learned Labour Court has held the punishment of dismissal awarded by the Petitioner Hotel to the Respondent employee, being shockingly disproportionate one. In paragraph No. 14 of the impugned order under consideration, the learned Labour Court has observed the renderance of 10-12 years of service by the Respondent employee and his past service record being clean and unblemish. I now proceed to assess whether the Learned Labour Court has properly applied the law enunciated by the Hon'ble Supreme Court, in the case of Colour Chem Ltd. (supra), to the case on his hand. In this context it is pertinent to observe that the allegation of legal victimiation needs to be tested on the anvil viz. whether giving regard to the nature of the particular misconduct and the past service record of the delinquent employee, a reasonable employer would ever impose in like circumstances the punishment of dismissal. In my considered view, therefore in the case on hand what ought to weight on the mind of the Learned Labour Court is the nature of the particular misconduct proved against the delinquent employee and whether in like circumstances a reasonable employer would ever impose such punishment of dismissal.

17. On perusing the impugned order on hand, it is discernable that in paragraph No. 13, the learned Labour Court has observed the submission made on behalf of the Petitioner Hotel to award compensation to avert the reinstatement of the Respondent employee, while insistence on the part of Respondent employee for reinstatement alone. In the concluding paragraph No. 14 of the impugned order, the learned Labour Court proceeded to observe length of service period and unblemishness in the same. The dismissal bringing economical death to the Respondent employee and thereby great need of job on his part. As the misconduct has been proved, a need to award some punishment to him. Therefore reinstatement without any backwages, without continuity in service, being just and proper in the interest of the future of the delinquent employee and his family and would not cause any hardships to the Petitioner Hotel also. The relation between the Petitioner Hotel and Respondent employee has not been so strained that the Respondent employee cannot be adjusted in service. The punishment of deprivation of backwages and continuity in service would teach a lesson to the Respondent employee, so that he will not repeat the similar misconduct in future. In my considered view, nowhere the learned Labour Court has taken into consideration a touch-stone provided by Colour-Chem Ltd. case (supra), whether in like circumstances a reasonable employer would inflict such punishment of dismissal. For undertaking such exercise, it was for the learned Labour Court to step in shoes of a reasonable employer to consider the nature of particular misconduct and justness and properness in the punishment of dismissal. Towards it, the learned Labour Court should have taken into consideration the nature and requirement of the business run by the Petitioner Hotel, the nature of duties assigned to the Respondent employee and effect of giving any punishment lesser than discharge and dismissal on the business and discipline of the Petitioner Hotel. In my opinion all these dimensions have been totally missed by the learned Labour Court while holding unfair labour practice under clause (*a*) of item 1 of Sch. IV. In my view, what has been mainly weighed on the mind of learned Labour Court is the aftermath of the punishment of dismissal.

18. The learned Advocate Shri Rai K. T. for the Petitioner Hotel has submitted that, pressing into service the decision of Honourable Bombay High Court in the case of Basu Deba Das (Supra), the required standard of discipline in the Five-Star Hotel like the Petitioner, was brought to the notice of the learned Labour Court, accordingly there are observations in paragraph No. 13 on page No. 15 of the impugned order. Adverting to the charge-sheet dated 13th April, 1994, served on the Respondent employee. I observe that on 10th April, 1994 at about 10 p.m. there was a complaint from Clientele occupying Table No. 39 about the delay on the part of the Respondent employee in paying attention to him. The said Clientele accordingly lodged the complaint with the superior of the Respondent employee Shri V. Wagh, who in turn instructed the Respondent employee to attend the said table without any further delay. The Respondent employee however replied Shri Wagh in a rude and insolent manner using derogatory and subversive language. In the second stage of the episode, when Mr. Wagh was trying to contact Asstt. F & B Manager, Mr. Deepak Advani, without any provocation from Mr. Wagh, the Respondent employee again shouted angrily using foul language and thereby created a commotion and scene in and around the establishment and in presence of several esteemed guests of the Hotel. In the third stage of the episode, I observe that when the Asstt. F & B Manager, Mr. Deepak Advani intervened and advised the Respondent employee to cool down and lower down the voice, by pointing finger at Sr. Deepak Advani, shouted at him also, using subversive language. Admittedly these charges have been duly proved in the departmental enquiry. In the enquiry, the eye witnesses have stated that due to the scene created by the Respondent employee, guests in the Restaurant got disturbed and panicky, tarnishing the discipline and reputation of the Petitioner Hotel.

19. On this backdrop, it is required to ascertain whether a reasonable employer would award the punishment of dismissal in the like circumstances. In this connection, the learned Advocate Shri K. T. Rai has urged that the Petitioner establishment has been a Five Star Hotel, functioning in a hospitality business, where maintaining a highest quality of food and ambiance has been a soul and hall-mark of the business. Clientele to be entertained in the Five Star Hotels are paying exorbitant charges for the services rendered to them. Therefore, even a solitary incidence like the one created by the Respondent employee shatters the image, reputation and thwarft the business of the Petitioner Hotel. No Clientele who got disturbed and panicky due to the commotion made by the Respondent employee would pay any further visit to the Petitioner Hotel nor he would recommend the said Hotel to any one else. I fully accede to the argument advanced by the learned Advocate Shri K. T. Rai. In my considered view, the Petitioner Hotel has been located on Juhu Beach, wherein, there has been a string of Five Star Hotels, jostling and endeavouring for earning business. Maintaining a serene and pleasant ambiance and serving good quality of food with polite service, has certainly been a requirement soul and hallmark of the Five Star Hotel and the same cannot be considered to be utopian assertion on the part of Petitioner Hotel. The said requirement of the business undertaken by the Petitioner Hotel certainly renderes the unruly and violent behaviour of the Respondent employee towards the Clientele from the affluent Society and his superiors, being grossly servere in nature. In my considered view therefore in a given set of facts awarding a punishment of dismissal to the Respondent employee to ensure the discipline and business in time to come, would not amount to shockingly disproportionate in the eyes of the “reasonable employer” in the like circumstances, I therefore do not find any evidence to any extent, available to the learned Labour Court, to hold the Petitioner Hotel guilty for the unfair labour practices even prescribed under Clause (a) of item 1 of the Sch. IV. To my dismay neither the learned Labour Court nor the learned Advocate Shri Sandeep Chaubal properly perceived the lucid ratio laid down in the judgment of Colour-Chem Ltd. (supra).

20. The learned Advocate Shri Sandeep Chaubal placing a reliance on the alternate prayer made by the Petitioner Hotel to award compensation in lieu of reinstatement of the Respondent employee, has submitted that such prayer is a clear indication of the "dismissal" being a shockingly disproportionate punishment awarded to the misconduct committed for the first time in the entire service period, hence entailing reinstatement of the Respondent employee. I do not find any merit in such contention for a simple reason that it has been prayed alternatively and in fact indicates "come what may" situation on the part of the Petitioner Hotel to avert the coming back affairs of the Respondent employee, in the interest of its business. However catching the thread of such alternative prayer made by the Petitioner Hotel, I proceed to observe that the moment I hold the perverse findings being rendered by the learned Labour Court in respect of unfair labour practice on the part of the Petitioner Hotel, this Court cease to have any jurisdiction to pass any operative order against the Petitioner Hotel. But in peculiar facts of the matter on hand, it would be a mechanical exercise on the part of this Court. The State Legislation *viz.* the MRTU & PULP Act operates in tandem with the Central Legislation *viz.* Industrial Disputes Act, 1947. The aim and object of the latter has been for investigation and settlement of industrial dispute. In my view to give a quitous to the industrial dispute under consideration, to have a salutary and salubrious effect on the maintenance of industrial peace in the establishment of the Petitioner Hotel and to lesson the rigour of economical death of the Respondent employee who has rendered unblemish service for more than a decade, it would be expendient to award amount in the form of compensation while separating him from the employment of the Petitioner Hotel. In view of the foregoing observations, it is explicit that the Revision Petition No. 156/ 2001 does not hold any merit, therefore, should fail. Accordingly I proceed to pass the following order :—

Order

(*i*) Revision Petition No. 148/2001 stands partly allowed and Revision Petition No. 156/ 2001 stands dismissed.

(*ii*) The impugned order dated 8th August 2001 passed in Complaint (ULP) No. 223 of 1995 stands quashed and set aside.

(*iii*) The Petitioner Hotel is hereby directed to treat the dismissal order dated 1st April 1995, served on the Respondent employee, as a discharge simpliciter for the purposes of paying his terminal benefits.

(*iv*) The Petitioner Hotel further directed to pay compensation amount equal to 15 days average pay, which should include Basic Plus D. A. only, for each completed year of service, alongwith payment of terminal benefits.

(*v*) No order as to cost.

R. U. INGULE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 13th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 30th March 2002.

IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 132 of 1998 IN COMPLAINT (ULP) No. 2 of 1994.—Kamala Mills Limited, SB Marg, Lower Parel, Mumbai 400 013.—*Applicant—Versus*—(1) Kamalakar Vittal Rawool; S/o Late Shri Vitthal Datarram Rawool and legal heir of Late Shri Vittal D. Rawool, 17, D/39, Haji Kasam Chawl, N. M. Joshi Marg, Mumbai 400 013; (2) Shri M. N. Kulkarni, Presiding Officer, Fourth Labour Court, Mumbai.—*Opponents.*

REVISION APPLICATION (ULP) No. 06 of 1998.—Shri Kamlakar Vitthal Rawool, S/o Late Shri Vitthal Dattaram Rawool and legal heir of late Shri Vitthal D. Rawool, 14, D/39, Haji Kasam Chawl, N. M. Joshi Marg, Mumbai 400 013.—*Applicant—Versus*—(1) M/s. Kamala Mills Limited, S. B. Marg, Lower Parel, Mumbai 400 013; (2) Shri M. N. Kulkarni, Presiding Officer, Fourth Labour Court, Mumbai.—*Opponents.*

In the matter of revision applications under section 44 the MRTU & PULP Act against the order dated 6th February 1997 and 24th November 1997 passed by the Fourth Labour Court, Mumbai in Complaint (ULP) No. 02 of 1994.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shrimati Geeta Raut, Advocate for the Mill.

Shri S. S. Acharekar, Advocate for the Employee.

Judgment and Order

1. The present Applicant mill in Revn. Appln. (ULP) No. 132 of 1998 was the Respondent in the complaint being Complaint (ULP) No. 2 of 1994 filed by the father of the Opponent No. 1 in Revn. Appn. (ULP) No. 132 of 1998 before Fourth Labour Court, Mumbai, for having committed unfair labour practices under items 1(*a*), (*b*), (*c*), (*d*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act. (hereinafter the deceased father is referred to as the deceased Complainant and his son is referred to as the Complainant's son and the Respondent mill is referred to as the mill.)

2. The complaint being Complaint (ULP) No. 2 of 1994 was accompanied by an application Exh. U-2 for condonation of delay. On considering the said application and say *i.e.* the written statement and on hearing both parties, the learned trial Judge was pleased to allow the said application *vide* his order dated 6th February 1997. Thereafter, the trial Judge framed the issues and then both parties produced their evidence. On considering the evidence on record, the trial Judge was pleased to allow the said complaint and granted reliefs *vide* his order dated 24th November, 1997. Being aggrieved by both the said orders, the mill has filed this revision application being Revn. Application (ULP) No. 132 of 1998 on the grounds as given in its revision memo. The employee has also filed another revision application being Revn. Appln. (ULP) No. 02 of 1998 for the reasons as given in his revision memo.

3. The deceased Complainant approached the trial Court with the following facts—

The deceased Complainant started working with the mill from 1994 in the Folding Department. In the year 1982, the mill locked/closed its activities without any notice to him and, therefore, he was not allowed to resume his duty. He was told that he would be informed as soon as the mill will be re-opened, but he had not been informed till the date of the complaint. It is further alleged that he sent a letter of approach in the year 1993 and then he was informed in 1993 by the mill that his services had been terminated. Thus, his termination is illegal, without any enquiry and without any notice and also without compliance of the provisions of the Industrial Disputes Act. Hence the complaint for unfair labour practices under items 1(*a*), (*b*), (*c*), (*d*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act.

4. During pendency, the Complainant died and his legal representative *i.e.* his son came to be brought on record.

5. Heard the learned Advocate for both parties. Considering their arguments and the material on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :

Points	*Findings*
(*i*) Whether the trial Court has rightly decided the application Exh. U-2 for condonation of delay and passed the order dated 6th February, 1997 ?	Yes.
(*ii*) Whether the trial Court has rightly decided the issues and passed the final order dated 24th November 1997 ?	Yes.
(*iii*) Whether it is necessary to interfere with the findings and/or order dated 6th February 1997 and the final order dated 24th November 1997 ?	No.
(*iv*) What order ?	As per the order below.

Reasons

6. Like the deceased Complainant, one other co-employee *viz.* Banarasi Umashankar Pandey filed his complaint being complaint (ULP) No. 3 of 1994 against the mill. Since both the complaints involved common issue of facts and law, the trial Judge decided both the complaints together by his common judgment dated 24th November 1997. Here, the mill has challenged the orders dated 6th February 1997 condoning the delay and the final order dated 24th November 1997 in the complaint being Complaint (ULP) No. 2 of 1994 filed by the deceased Complainant. As regards the complaint filed by the deceased Complainant, the trial Judge has held that the case against the mill in respect of unfair labour practices under items 1(*a*), (*b*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act is proved, but no relief is granted in favour of the deceased Complainant's son. The mill has also made clear in its revision application that this revision application is for challenging the order on the delay condonation in filing the complaint and challenging the final order in the complaint in respect of the deceased Complainant to the extent of declaration that the mill has engaged in unfair labour practices under items 1(*a*), (*b*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act. While the deceased Complainant's son has made it clear in his Revn. Application that he wants to challenge the findings on the Issues Nos. (3) and (4) with regard to the reliefs and final orders rejecting the relief/reliefs.

7. *Point No. 1.*— The application for condonation of delay was filed alongwith the complaint filed by the deceased Complainant, but the deceased Complainant died during pendency of that application and his legal representative *i.e.* his son was brought on record. Then, the trial Judge decided and allowed the application on 6th February 1997. After 9 months, the trial Judge decided the main complaint and passed the final order on 24th November 1997. Meanwhile, the mill did not challenge the order on the application for condonation of delay. Even if it is pressumed that such order can be challenged after such inordinate delay, the facts on record shows that the trial Judge considered the submissions and objections made by the learned advocates for both parties and come to conclusion that the deceased Complainant was not aware

termination of his services and he firstly came to know about the same in the year 1993 and immediately thereafter, the complaint came to be filed. The trial Judge also discussed the case law relied on by both parties and in view of the observations in the cases referred to him, the application for condonation of delay came to be allowed. So, considering all the facts, it does not appear that the trial Judge has wrongly passed the order dated 6th February 1997. In the result, the Point No. 1 is hereby decided in the affirmative.

8. *Point No. 2.*—It appears from the judgement in the complaint that the trial Judge has held that the mill is engaged in unfair labour practices under Items 1(*b*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act, but no relief is granted in favour of the deceased Complainant/his son. The trial Judge has further held that the general strike in the textile mills commenced in January, 1982 and the same was declared illegal in February, 1982. But the deceased Complainant was not aware of termination of his service, and he came to know about the same in 1993 when he received the letter from the mill. On the facts and evidence on record, the trial Judge has treated that the deceased Complainant was terminated on the day on which he received the letter in the year 1993 *i.e.* on 13th September 1993. If it is so, the question of compliance of the provisions of section 25-F of the ID Act after the alleged termination in the year 1983, does not arise. It further appears that the deceased Complainant completed 60 years of his age on 1st January 1993. While the trial Judge treated his termination with effect from 13th September 1993. The complaint was filed in the year 1994. It further appears that there was agreement between the recognised union and the mill. It was agreed by the said agreement to retire the employees, who completed 60 years of their age on 31st October 1992. As per the service record, the deceased Complainant's birth date was recorded in the service record was recorded as 1930. So considering all the facts, it appears that the deceased Complainant completed 60 years of his age on 1st January 1993 and as per the said agreement, he was to retire from service on that date. Therefore, the question of granting relief does not arise.

9. As regards the birth date, the deceased Complainant's son deposed that his father was 59 years of old at the time of his father's death *i.e.* 5th January 1996. But in the complaint or verification, there was no mentioning about the age of the deceased Complainant. It was tried before the trial Judge to place another birth date by producing xerox copy of the ration card. But the trial Judge rightly refused to accept the age of the deceased Complainant and held that the year of birth of the deceased Complainant is 1930.

10. As regards the agreement between the recognised union and the mill, it appears that there was such agreement giving authority to the mill to retire employee, those who completed 60 years of their age on 31st October 1992. Since the said agreement was between the recognised union and the mill, it was binding on the deceased Complainant. Therefore, the deceased Complainant was not entitled to continuation or reinstatement till 63 years of his age. As discussed in the foregoing paragraph, the deceased Complainant completed 60 years of his age as on 1st January 1993 that is prior to the complaint, therefore, he was not entitled to reinstatement or continuation in service, after 60 years of his age.

11. The deceased Complainant had informed to the mill in writing that he was reporting for work from 1982 till 1993, but he was not given any work. The mill was functioning from 1982 to 6th November 1988. Considering this fact, as well as the said agreement between the recognised union and the mill, and the recital in the BIFR scheme in the year 1993, it is clear that the mill was not functioning from 7th November 1988 till it restarted functioning in January, 1994. Anyway, it appears that the deceased Complainant did not report for work from 1982 till he completed 60 years of his age. Therefore, the question of granting any relief does not arise.

12. From the above discussions, it appears that the Complainant was terminated without holding any enquiry and was not paid any legal dues, as required by law. Thus the fact and evidence on record shows that the mill/Respondent in the complaint had engaged in unfair labour practice. Therefore, it needs not to set aside the order of declaration of unfair labour practices. As regards the reliefs, the deceased Complainant/his son was/is not entitled to any relief and the trial Judge has rightly decided the issue of relief and passed the order rejecting the relief. Therefore, I have no hesitation to hold that the trial Judge has rightly decided the issues including the Issue No. 1 pertaining to the declaration of unfair labour practices. In the result, the Point No. 2 is hereby decided accordingly.

13. *Point No. 3.*—In view of above discussions, it is not necessary to interfere with the findings and the final order dated 24th November 1997. In the result, the Point No. 4 is hereby decided accordingly. With this, I proceed to pass the following order :—

Order

Both the Revision Applications (ULP) Nos. 132 of 1998 and 6/1998 are hereby dismissed.

No order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 5th February 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 11th March 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI R. U. INGULE, MEMBER

COMPLAINT (ULP) No. 515 OF 2000.—Shri P. S. Kudva, C-5, Poker Co-op. Housing Society Ltd., L. T. Road, Dahisar (West), Mumbai 400 068.—*Complainant—Versus*— (1) M/s. Gordhandas Desai Pvt. Ltd., Court Chambers, 35, Sir V. Thackersey Marg, Mumbai 400 020, (2) B. V. Raval, General Manager, M/s. Gordhandas Desai Pvt. Ltd..—*Respondents.*

In the matter of Complaint of Unfair Labour Practice under sections 28 and 29 read with item 3 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— Shri R. U. Ingule, Member.

Appearances.— Shri Vinay Menon, learned Advocate for the Complainant,

Shri George Kurian, learned Advocate for the Respondents.

Oral Judgment

(20th March 2002)

This Complaint has been filed under section 28 read with item 3 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971 (for short, 'MRTU & PULP Act') with a prayer for a direction to the Respondent Company to withdraw and cancel the transfer order dated 28th April 2000 issued to the Complainant.

2. Briefly stated facts giving rise to filing of the instant Complaint are as under :—

The Complainant has been appointed as a Sales Technician in the employment of the Respondent Company. At the time of appointment, he was issued with the copy of the Company's Rules and Regulations. The Respondent had given one more appointment letter dated 30th June 1993. *Vide* the letter dated 22nd May 1996 the Complainant was given a designation of Executive order Administration. Complainant was performing the duties like filing the documents, attending to telephone calls, preparing statements, maintenance of stock register etc. *Vide* the Circular dated 4th May 1998 the duties of the Complainant were fixed. *Vide* letter dated 1st April 1999 he was assigned with the functions of "Project Leader" and designated as "Marketing Executive". The Complainant was meted out with the treatment at the hands of Mr. Rawal. By serving a letter dated 28th April 2000, promoting him with transfer to Calcutta. The promotional post has been of 'Marketing Manager' which was given to the Complainant with *malafide* and ulterior motive. Mr. Patel, the official of the Respondent under the guise of discussion had forced the Complainant to resign from the employment. The Complainant has refused promotion given to him by the Respondent Company and that should automatically close the issue pertaining to he being transferred to Calcutta as the very basis of inssuance of the transfer letter has been promotion and therefore Complainant be continued to function as a Clerk. The Complainant had approached the company for resuming the duties however, the same has been denied to him. Therefore, a prayer for passing order declaring unfair labour practices on the part of the Respondent.

3. The Respondent Company by filing a Written Statement at Exh. C-2 has resisted the contentions raised by the Complainant *interalia* on the grounds that no unfair labour practices have been adopted by it. The Complainant came to be appointed as a Co-ordinator. Thereafter he was re-designated as 'Executive Officer (Admn.)', as such rendering duties in the managerial/ administrative capacity. The Complainant thereafter was designated as 'Marketing Executive' and thereafter promoted and transferred *vide* the letter dated 28th April 2000 to Calcutta in the post of Marketing Manager. As per the rules and regulations of the Company, the jurisdiction to try any dispute in respect of the Complainant has been with the Courts from State of Gujarat. As per the service conditions, the Respondent Company is having a right to transfer the services

of the Complainant anywhere in India. The Complainant has not been transferred with any *malafides*. No threat has been given by Mr. Patel, Managing Director of the Company. The transfer order has been issued in discharge of administrative functions. The Complainant's subsequent claim that he does not want to be promoted is a non-issue and such a question does not arise in the facts and circumstances of the case. The transfer order dated 28th April 2000 clearly states that the Complainant is transferred to Calcutta office. The promotion as Marketing Manager is secondary and even if the Complainant does not want promotion, his transfer to Calcutta Office remains effective. The work he would be doing in Calcutta Office would be that of a Marketing Manager, but in case he does not want that position, he will continue to work as a 'Marketing Executive' at Calcutta. It is, therefore, the Complainant denial to refuse to accept the promotion does not automatically close the issue in respect of his transfer. The basis of transfer has not been promotion. No *malafides* can be ascribed to the Respondent on any ground in transferring the services of the Complainant to Calcutta. If at all the Complainant wanted to report on duty, he should have reported for duties at the transferred place *i.e.* Calcutta and not in the Mumbai office. Therefore, not entitled for any wages and monetary benefits thereto. The Complainant has not been entitled for any commission for the year 1999-2000, also not entitled to any *ex-gratia* payment. Such plea cannot be entertained in the present Complaint and therefore a prayer for dismissal of the complaint.

4. In the aforesaid rival contentions, following issues have been framed by this Court below Exh. O-3 and my findings thereon, for the reasons given below therein, are as under :—

Issues	*Findings*
(*i*) Whether the Complainant proves that he is an 'employee' under the MRTU & PULP Act and whether he has a *locus standi* to file the present Complaint ?	No.
(*ii*) Whether the Respondent has proved that the Complainant has been covered under the exclusionary clause provided under section 2(s) of the Industrial Disputes Act, 1947 ?	Yes.
(*iii*) Whether the Complainant proves that this Court has jurisdiction to entertain the present Complaint in view of the terms in the appointment letter ?	Yes.
(*iv*) Whether the Complainant has proved that the Respondent have engaged in and are continuing to engage in unfair labour practices prescribed under item 3 of Sch. IV of the MRTU & PULP Act ?	Yes.
(*v*) Whether the Complainant is entitled to the relief claimed in the Complaint ?	No.
(*vi*) What order ?	Please, see final order.

Reasons

5. I have heard the learned Advocate Shri Vinay Menon for the Complainant employee and learned Advocate Shri George Kurian for the Respondent Company at length.

6. *Issue No. 3.*— The Respondent Company has assailed the very maintainability of the Complaint under consideration at its threshold *interalia* on the grounds that while issuing the appointment letters to the Complainant, he was furnished with rules and regulations of the Company which provide for jurisdiction to redress with any grievance in respect of services of

the Complainant, to be that with the Courts of law in the State of Gujarat. The Learned Advocate Shri George Kurian pressing heavy reliance on such terms of contract of service existing between the Complainant and the Respondent Company has vehemently submitted that the jurisdiction to decide any controversy in respect of service conditions of the Complainant would vest with the courts of law functioning in the State of Gujarat and not with this Court the Learned Advocate Shri George Kurian in addition to such contention has canvassed that the services of the Complainant *vide* the transfer order dated 28th April 2000 have been transferred to Calcutta. It is, therefore, the place of employment of the Complainant would be at Calcutta. In these set of facts, therefore, the territorial jurisdiction would lie with the Courts of law functioning in the State of West Bengal.

7. The Learned Advocate Shri Vinay Menon while countering the said contention raised on behalf of the Respondent Company has emphatically submitted that the availability of the jurisdiction to the Courts of law are always decided by the provisions under the Statute and not by the connivance of the parties to the litigation. I find a great force in the argument advanced by the Learned Advocate Shri Vinay Menon. In my considered view, it is the situs of employment and occurrence of substantial industrial disputes in a particular territory, which decides the availability of the territorial jurisdiction to the concerned Court. Admittedly the Complainant has been rendering services right from his date of appointment in the office of the Respondent Company at Mumbai. He has been served with the transfer-*cum*-promotion letter at Mumbai. It is, therefore, the situs of employment being Mumbai and the substantial industrial dispute being occuring within the territory of Mumbai, therefore, the territorial jurisdiction to redress the grievances in respect of any industrial dispute pertaining to Complainant would be with the Courts of law functioning within the territory of Mumbai. In view of this, I hold that the jurisdiction to try and decide the Complaint vest with this Court and not with the Courts functioning in the State of Gujarat or that in the State of West Bengal. I, therefore, answer the said issue in favour of the Complainant.

8. *Issue Nos. 1 and 2.*—Now I proceed to deal with a vitally important controversy deciding the fate of the maintainability of the very Complaint under consideration. At the outset, I observe that that the Complainant has been found to be blissfully complacent in flaunting the designations *viz.* Co-ordinator, Executive-Order-Administration and Sales Executive right from the date of his appointment *i.e.* from 1st July 1993 till this date. However, when he has been confronted with the adverse circumstances, he is attempting to scuttle from all these designations wherein he has worked, posed and projected himself to the outside parties till this date, now calling himself being a Clerk and not belonging to Managerial or Administrative cadre in order to get covered under the umbrella of Industrial Disputes Act, 1947 (for short, 'ID Act') and consequently under the MRTU & PULP Act. In his attempt to buttress the contentions raised on behalf of the Complainant, Learned Advocate Shri Vinay Menon for the Complainant by pressing into service a plethora of citations at list Exh. U-53 has strenuously urged that the assignment of such high-sounding nomenclature to the Complainant by the Respondent Company, would not take him in the managerial / executive cadre, however, it is the predominant nature of the duties rendered by him, would be decisive to ascertain whether he is a 'workman' within the meaning of definition provided under section 2(s) of the ID Act, I am fully in agreement with the Learned Advocate Shri Menon. I therefore proceed to ascertain the various principles of law that laid down in the various citations that pressed into service by Learned Advocate Shri Vinay Menon and to assess the evidentiary value of the various documents that placed on file by both the parties to the litigation.

9. I observe that in a case decided by the Honourable Bombay High Court between Aloysis Nunes *V/s.* Thomas Cook India Ltd. *(2000 II CLR p/649)*, while pointing out the ambit and scope of the expression "administrative / executive cadre", his Lordship has *interalia* observed that the test whether the incumbent belongs to managerial / administrative capacity or not, would be whether he occupy a position, to command or decide and whether he is authorised to act in certain matters within the limits of the Authority given to him without the sanction of manager or other supervisor. The another indication would be whether he is in command of a

territory or department over which he exercises his managerial functions. His Lordship advertting to the decision in a case of Maheshwari (D.P.) *V/s.* Delhi Administration & others *(1984 I LLN p/1)* has also observed that merely because on occasions the workman is entrusted to take some important mission would not make him a manager. Therefore what is required to be considered are his main duties. Their Lordships of the Supreme Court in a case of Verma (S.K.) *Versus* Mahesh Chandra & another *(1983 II LLN p/637)* have *interalia* observed that one should not be carried away by the affiliation or designation given to an employee by his employer. Notwithstanding the glorified designation what must be looked into is the nature of his duties to discover what precisely that person is doing. The Honourable Supreme Court in a case of Arkal Govind Rai Rao *V/s.* Ciba Geigy of India Ltd. *(1985 LAB. I. C. p/1008)* has *interalia* observed that the primary and basic duties that discharged by the concerned incumbant would be the criterion to decide whether he has been covered under section 2(s) of the ID Act or not and not the incidental duties assigned to him.

10. In connection with the nature of duties being discharged by the Complainant, he has pleaded in the complaint that he had undertaken the duties like filing, attending the telephone calls, preparation of statements, maintenance of stock register, looking after the day-to-day correspondence. In his examination-in-chief, the Complainant at Exh. UW-1 has submitted that he has rendered services to the Respondent similar to that he has rendered to his earlier employer M/s. C-Z Instruments India Pvt. Ltd., which were including receiving orders and tallying the same with the quotations submitted by the Sales Departments, sending letters to the concerned clients on the basis of the draft prepared by him and simultaneously placing requisitions with the employer. After receiving the delivery dates from the principal supplies, he was communicating the tentative delivery dates to the clients, etc. In paragraph No. 3, the Complainant has stated that he was required to contact the customers in the field for taking into consideration the space of the Undertaking for preparing a graph for providing furnitures therein. He used to submit such graph to the Baroda Office to enable its employers to submit offer to its clients.

11. I however observe that in the evidence of the Complainant at Exh. UW-1, he has stated that he was issued with a letter dated 27th December 1993 at Exh. U-20 designating him as a ' Co-ordinator '. Thereafter *vide* the letter dated 22nd May 1996 at Exh. U-21, he was given a designation as an 'Executive-Order-Admn.' and in the circular dated 4th May 1998 at U-22, the Respondent has designated him as a 'Sales Executive'. The entire efforts on the part of the Complainant in his evidence found to be his alleged renderance of services as a 'Clerk', while the Respondent was assigning him the high-sounding various designations to project him as an 'Executive' and a person belonging to administrative category. The Learned Advocate Shri Vinay Menon has made an attempt to submit that the Respondent has been giving such high-sounding sophisticated various designations in order to fan and hype the ego of the Complainant and at the same time, to take away him from the clutches of the industrial law like the ID Act and MRTU & PULP Act. While countering the said contention, the Learned Advocate Shri George Kurian for the Respondent Company advertting to the various documents placed on file by both the parties to the litigation has vehemently submitted that the actual duties that primarily and basically discharged by the Complainant in its various designations clearly manifest his belonging to managerial / executive cadre and therefore applying any criterian that laid down by the Honourable High Court and Supreme Court, the Complainant squarely has been falling in the exclusionary clause that provided in the definition of ' workman ' under section 2(s) of the ID Act.

12. The Learned Advocate Shri George Kurian by referring to the appointment letter, placed on file at Exh. U-20, has pointed out that the specific terms and conditions for employment annexed to this appointment letter. Vividly manifest that the Complainant was placed in a designation of " Co-ordinator ". The said designation was subsequently changed to "Executive-

Order-Admn." *vide* the Company's letter dated 22nd May 1996 at Exh. U-21. The Company has thereafter re-designated the Complainant being a "Sales Executive" of the Laboratory Engineering Division (LED). The Learned Advocate further elaborated that the said circular dated 4th September 1998 specifically recites the responsibilities assigned to the Complainant under the caption of "Enquiry Generation" including preparing of Mailing List, Direct Mailing, Followup of enquiries, personal visits, etc. The said circular further clarifies that the Complainant would be in the office for most of the time to attend to telephone calls, messages filing, office administration, maintaining of registers for enquiries, quotations, movement of staff, etc. The Learned Advocate further advertted to the letter of the Company addressed to the Complainant dated 1st April 1999 at Exh. U-23 which informs the Complainant in regard to implementation of Project Vision 2000, wherein the Complainant has been assigned function of "Project Leader" with immediate effect and to work in the designation of "Marketing Executive". The Complainant was to report to Project Manager (Marketing) who was to be appointed and till then to report to Mr. B. Raval, General Manager. It is significant to note and observe at this juncture that the Company has given a sales target to the Complainant for the period of from 1st April 1999 to 31st March 2000 and the same was Rs. 25 lacs. The target in terms of volume was 482 Modules Plus 11 Fume Cupboards. The said letter further recites that the Complainant was expected to generate a sales of Rs. 2 lacs for laboratory fittings in the Company's standard range in the territory of the Complainant. The Complainant has been assigned with a territory in the said letter which was comprising of Mumbai, Thane and Goa and the said area was to be shared with Mr. Peter Andrade. The Company has further advised him that besides the said territory, he was to look after specific projects which might be given to him from time to time. The individual performance of the Complainant was to be reviewed by the Core Committee through its bi-monthly meetings. The documents were to be sent to the Complainant in the next few days thereafter to empower him to handle his responsibilities more effectively. The Company has ended this letter with a note that the Company was trusting in the Complainant being perfectly capable of handling such challenges in acceptance of the opportunity.

13. The Learned Advocate Shri George Kurian for the Respondent Company advertting to these letters, in my view, could clearly establish that in the month of April, 1999, by placing the Complainant in the post of "Marketing Executive", he was assigned the functions of "Project Leader", he was given the sales targets, advised to look after a specific territory which was to be given to him by the Company. His individual performance was to be reviewed by the Core Committee. The Company was to sent documents to empower him to perform his duties more effectively and he was to report to Project Manager (Marketing) who was to be appointed and till then to the General Manager. I therefore find that the said documentary evidence which has been placed on file by the Complainant himself squarely establishes that he was not only assigned with high-sounding and decorative designations, but he was entrusted with the duties assigning him sales targets too. The learned Advocate for the Respondent Company Shri George Kurian while reinforcing his contentions has advertted to the various documents placed on file by the Respondent Company. Advertting to the cross-examination of the Complainant at Exh. UW-1 in paragraph No. 13, the learned Advocate Shri George Kurian has pointed out that the various correspondence that placed on file at Exh. U-13 to U-24 have been admitted to have been sent by the Complainant under his signature to the various clientele on behalf of the Respondent Company. The Complainant has candidly admitted that he has sent these letters in the capacity of 'Marketing Executive'. I further observe that the letters at Exh. C-15, C-16 and C-20 have been prepared and signed by the Complainant. However, the Complainant has further deposed that the letters at Exh. C-17 to C-24 have not been prepared by him, but they were signed by him. In my considered view, all these correspondence that the Complainant has entertained under his signature with the various outside clientele, manifest that the Respondent Company was projecting the Complainant as its Marketing Executive. In my considered view, thereby by making commitments in all these letters which have been filed on file by the Company,

the Complainant was binding the Company and affixing the responsibility on it towards the clientele with whom the said correspondence was entertained. In this context, I may advert to a letter addressed to Cipla Ltd. at Exh.C-17 which recites that as discussed with the said Cipla Ltd. the Complainant did not find the amended letter dated 6th October 1999 from the Purchase Department of the said Company. The Complainant further informed the Cipla Ltd. that the supply was made as per his new offer dated 26th August 1999 and as per the discussion the Complainant had with Cipla Ltd. In the letter placed on file at Exh. C-18 addressed to Healing Cross Pharma Pvt. Ltd. on the subject of Quotation for Labexcel Laboratory Fume Chamber, the Complainant has informed the said Company not to hesitate to get in touch with them so that the requirement information could be promptly furnished. In my considered view, the Complainant was squarely discharging his duties falling within the managerial / executive cadre. It is significant to observe at this juncture that in the quotation giving specific terms and conditions of ALES, placed on file at Exh. C-19 manifest that the Erection Charges typed therein was 5% extra on Ex-Work Value. I observe that the Complainant has encircled the said figure of 5% by writing 3% so putting his initial there under. I, therefore, uphold the contention raised by the Learned Advocate Shri George Kurian for the Respondent Company that the Complainant was not merely transferring the decision and information which was received from his superiors, but he was independently entertaining the correspondence with the outside clientele of the Company, wherein he was projecting and posing himself as "Marketing Executive". The commitments made therein by the Complainant in the capacity of "Marketing Executive" were binding the Respondent Company and was certainly making it answerable to the third party clientele. Besides this, the Complainant was authorised to take a independent decision in order to quote the various charges and to make changes as per the need of the situation.

14. The Learned Advocate Shri George Kurian for the Respondent Company to establish that the Complainant was having a power and accordingly he sanctioned leave applied for by his subordinates, has placed on file the leave applications of some of the subordinate staff working in Mumbai Office at Exh. C-10, C-11, C-13 and C-14. I observe that *vide* these applications, the employees working in the designation of Clerk and Peon have applied for leave. I observe that all these applications have been signed by the Complainant in the capacity of Departmental Head. In the cross-examination, an attempt has been made by the Complainant to give a clarification that whenever the departmental head was not available, he was signing the leave applications for him. I however don't find this clarification holding any water for a simple reason that no name of such departmental head was given by the Complainant. I therefore uphold the contention raised by the Learned Advocate Shri George Kurian that the Complainant was authorised to recommend the leave applied for.

15. I observe that when the Complainant has come with a pleading that the Company has been assigning him with a high-sounding and sophisticated designations belonging to managerial/ executive cadre while in fact he was rendering services clerical in nature, that puts an obvious initial onus on him to establish as to how he was discharging the duties of a Clerk primary, basis and predominant in nature, to bring him within the definition of a 'workman' provided under section 2(s) of the ID Act. It is after discharging such initial onus successfully, it would have shifted on the Respondent Company to establish its contentions of Complainant falling under the exclusionary clause provided under section 2(s) of the ID Act. However, beyond mere denial to whatever contention raised by the Respondent Company in respect of Complainant's discharging duties in the administrative / executive cadre, no cogent evidence has been placed on file by the Complainant to discharge the initial onus rested on him. On the contrary Company has come with an ample documentary evidence that has been placed on file at list Exh. C-10 to C-26 and the admissions given by the Complainant in his cross examination to establish that the Complainant has been falling under the exclusionary clause provided under section 2(s) of the ID Act as he belongs to managerial / administrative category, as envisaged under sub-clause (*iii*) of the said section. In the aforesaid discussion, I answer the concerned issues accordingly.

16. The moment I hold that the Complainant has not been a 'workman' within the meaning of definition provided under section 2(s) of the ID Act, the Complaint under consideration does not stand maintainable for the trial of this Court and the same need to be dismissed at its very threshold. However, in an anxiety to dispose of the entire controversy that raised in the instant Complaint on its all facts and dimensions, I proceed to ascertain the merits in the rest of the contentions raised on behalf of the Complainant in regard to alleged unfair labour practice on the part of the Respondent Company prescribed under item 3 of Sch. IV *i.e.* to transfer the Complainant *malafidely* from Mumbai to Calcutta under the guise of following management's policy. In this connection, I observe that it is not the case of transfer simplicity. The transfer letter dated 28th April 2000 under consideration, placed on file at Exh. U-27 manifest that the same has been promotion-cum-transfer letter. While transferring the services of the Complainant from Mumbai to Calcutta, the Complainant has been promoted to the post of "Marketing Manager" from his existing post of "Marketing Executive". The letter dated 2nd May 2000 addressed to the Complainant by the General Manager of the Respondent Company at Exh. U-29 manifest that the Company has been in urgent need of a Manager at its office at Calcutta branch. Since the Complainant has picked up some knowledge of marketing the products of the Company in the field of Mumbai and the surrounding region, the Respondent Company has selected and promoted the Complainant in a new senior position so that he can take up this new responsibility and serve the Company in a better way. The letter at Exh. U-31 addressed to the Complainant under the signature of General Manager recitest that the Complainant was to resume duties in his promoted post of "Manager". I, therefore, find that the said transfer letter dated 28th April 2000 has not been only transferring the services of the Complainant to Calcutta in the same post of "Marketing Executive", but he has been transferred to Calcutta to work in a promoted post of "Marketing Manager" as there was a urgent need of Manager in Calcutta to promote the interest and business of the Respondent Company. The General Manager of the Respondent Company Shri B. V. Raval in his examination-in-chief in para 6 has stated that as per the advice of the Consultant of the Respondent Company to send a competent person to handle the marketing affairs of the Company at Calcutta as the Company was having a better prospect and potential in his business over there, the Complainant was transferred on promotion to Calcutta. The learned Advocate Shri Vinay Menon advertising to all these documentary and oral evidence has urged that the Company was in need of a "Manager" to promote the business of the Company in Calcutta and there was need of sending a Marketing Executive which has been a subordinate post to post of Manager. The learned Advocate further elaborated that initially the Complainant has accepted the said promotion-cum-transfer letter. However, later on has changed his decision not to accept such added responsibilities he being confronted with adverse-individual and family problems. It is, therefore, the Complainant was having every liberty to deny such promotion to the post of Marketing Manager and accordingly work in Calcutta with such added responsibilities. The learned Advocate emphatically submitted that there was a need of Marketing Manager at Calcutta, therefore, the moment the Complainant has denied to accept such added responsibilities and work in a promoted post of Marketing Manager, his transfer in the capacity of Marketing Manager should have been cancelled by the Respondent Company. However, its consistent and continuous insistance of sending the Complainant to Calcutta, whether in the post of Marketing Executive or Marketing Manager, clearly spells out the *malafides* on its part in transferring the services of the Complainant to Calcutta under the guise of following management's policy and I find a great force in the said argument canvassed by the learned Advocate Shri Vinay Menon for the Complainant.

17. I observe that in the additional Written Statement, placed on file by the Respondent Company at Exh. C-7, manifest that the Respondent Company has come with a case that promotion in the post of "Marketing Manager" has been a secondary matter. Despite the Complainant refused his promotion, still his transfer to Calcutta Office remains effective. On his transfer to Calcutta Office his work would be that of a "Marketing Manager" and in the

event he does not want to work in this position, he would continue to work as "Marketing Executive" at the said place of transfer. In my considered view, weighting the said contention raised by Respondent Company in the oral and documentary evidence that advertted to above, clearly lays down that requirement of the Company at Calcutta was that of a "Marketing Manager". It was accordingly advised by the Consultant of the Respondent Company. The letters addressed to the Complainant under the signature of General Manager accordingly recites that the Company urgently needs a "Marketing Manager" to promote the business of the Company in Calcutta. It is, therefore, highly unsustainable on the part of the Respondent Company to come with a contention that in the event of acceptance of the promotion, it is open for the Complainant to work in a promoted post of "Marketing Manager" and albeit he refused such promotion, still he would be under compulsion to go to Calcutta to work in his present post of "Marketing Executive". In my considered view, the *malafide* in transferring the services of the Complainant at Calcutta on the part of the Respondent Company would be a mental state on its part. It is for the Complainant while discharging his burden of proving unfair labour practice on the part of the Respondent Company, to establish such an element of *malafide.* It is therefore obvious that such *malafide* can be established by the Complainant on adducing circumstantial and inferential evidence, advertted to above by this Court. In my considered view, therefore, the oral and documentary evidence advertted to above, clearly and unmistakly makes out a case of *malafide* on the part of the Respondent Company in transferring the services of the Complainant to Calcutta by hook or crook. I, therefore, find the Complainant being succeeded in establishing the contentions of unfair labour practices raised against the Respondent Company prescribed under item 3 of Sch. IV of the MRTU & PULP Act. Had this Court found the Complainant being covered under the definition of "workman" provided under section 2(s) of the ID Act, the Complainant would have been entitled to for the prayer of quashing and setting aside such transfer-cum-promotion letter dated 28th April 2000 at Exh. U-27 under consideration. However, as I found the Complainant being not covered under section 2(s) of the ID Act for want of any jurisdiction, I cannot grant any prayer to the Complainant and therefore proceed to dismiss the Complaint, by passing the following order :

Order

(*i*) Complaint (ULP) No. 515/2000 stands dismissed being not maintainable.

(*ii*) No order as to cost.

R. U. INGULE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 20th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
dated the 8th April 2002.

———

BEFORE SHRI U. R. PATIL, HONOURABLE PRESIDENT,

INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

REVISION APPLICATION (ULP) No. 30 of 2002.—In.—COMPLAINT (ULP) No. 116 of 1999.—Mr. Kanti L. Bhanushali, B-15, Perbundar Bldg., Chirag Nagar, LBS Marg, Ghatkopar, Mumbai 400 086.—*Applicant—Versus*—(1) M/s. N. G. Bhanushali & Co., B-2, Trapinex House, 15, Sholapur Street, Mumbai-9; (2) The Presiding Officer, 7th Labour Court, Mumbai.—*Opponents.*

In the matter of Revision under section 44 of the MRTU & PULP Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri. M. V. Palkar, learned Advocate for the Applicant.

Shri A. G. Nagwekar, learned Advocate for the Opponent.

Oral Judgment

(4th April, 2002)

1. The Revision in question is preferred by the Original Complainant Shri Kanti L. Bhanushali feeling aggrieved of the judgment and order dated 26th December 2001 passed by the 7th Labour Court, Mumbai whereby the said Court dismissed the Complaint filed by the Complainant.

2. The brief facts giving rise to the case may be stated as follows :

It is seen that the Complainant Shri Bhanushali joined the services of the Original Respondent as a 'Bill Clerk' since 4th September 1981 on monthly salary of Rs. 2770. It is stated that he was required to look after the clearing of goods and mainly octroi work. He claimed that his service record was clean and unblemished. It is contended that there are about 30 workmen working in the Respondent Company.

3. It is submitted that on 15th October 1998 he was surprised because of the termination of his services without any showcause notice, charge-sheet and without any enquiry under the Model Standing Orders or any other labour laws. Thus the Complainant states that the action of the Respondent is totally illegal, *malafide* and arbitrary. It is contended that even after 15th October 1998 every day he tried to resume his duties, but was not allowed to resume till 21st January 1999. Complainant further says that on 2nd December 1998 when he tried to resume his duties, the Respondent issued him two letters dated 18th July 1998 and 1st September 1998 and the said letters were handed over to him on 2nd December 1998. Complainant states that he was compelled to put his signatures to show that as if the said letters were issued to him on the aforesaid respective dates. Complainant was compelled to accept the cheque of Rs. 27,895 by the Respondents and the said cheque was towards the legal dues. Complainant states that he has not encashed the said cheque till today.

4. As per the contention of the Complainant, he was not allowed to resume his duty till 21st January 1999 and he wrote detail letter to the Respondent on that day claiming reinstatement with continuity of service, etc. The said letter was replied by the Respondent on 25th January 1999 and Respondent made false allegations against the Complainant. In substance, Complainant states that the Respondent employer has adopted unfair labour practice under section 28 read with item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act, 1971 and claimed for the reliefs mentioned in the prayer clauses and particularly for reinstatement with backwages and continuity of service.

5. The Respondent employer resisted the complaint by filing Written Statement Exh. C-3 and the same may be narrated as follows :—

It is stated that the complaint is not maintainable in law as well as on facts and the same is filed after 90 days of the limitation period. Respondent contended that the Complainant after termination of his services negotiated from time to time with the Respondents and subsequently on 2nd December 1998 he accepted a cheque of Rs. 27,895 in full and final settlement of his claim as a result of termination of his services and the said cheque has not been returned to the Management. Respondent states that Complainant has accepted the legal dues in full and final settlement of his claim for reinstatement and/or re-employment and therefore the Complainant's complaint is not maintainable.

6. Respondent states that the Complainant is employed with M/s. Sainath Shipping Services, 12/14, Rajiv Mansion, Kazi Sayyed Street, Mazjid, Mumbai 400 009 and his getting much more salary than the salary he was getting with the Respondent Company. Complainant was working from 1st November 1987 and not from 4th September 1981. It is submitted that the services of the Complainant were not at all terminated all of a sudden, but before termination several oral warnings were given to him and even in writing warnings were given which were duly accepted by him, but he did not submit any written explanation. It is also stated that Complainant had agreed in his letter dated 2nd December 1998 to accept his legal dues towards full and final settlement. Thus on these and other grounds, the Respondent denied the claim of the Complainant and also denied that any unfair labour practice was committed by the employer and requested to dismiss the complaint of the Complainant.

7. I have called for the record and proceedings and gone through the same. Heard Mr. Palkar, learned Advocate for the Applicant and learned Advocate Mr. Nagwekar for the Respondent. The following points arise for my determination, with my findings thereon, as below :—

Points

(*i*) Whether Revision Application (ULP) No. 30/2002 is to be allowed by setting aside the order dated 26th December 2001 passed by the 7th Labour Court, Mumbai ?

(*ii*) What order and relief ?

Findings

(*i*) Point No. 1.—Yes.

(*ii*) Point No. 2.—Please see final order.

Reasons

8. *Point No. 1 :* Record and Proceedings reveal that the Complainant Shri Kanti L. Bhanushali joined the services with the Respondent *w.e.f.* 4th September 1981 as a Bill Clerk and he was getting the monthly salary of Rs. 2,770. On the contrary, it is the case of the Respondent that the Complainant joined the services *w.e.f.* 1st November 1987 and therefore there is a controversy on this point. I don't find that the said controversy is material while disposing the Revision Application.

9. It is important to note that the Complainant Shri Bhanushali was working with the Respondents for more than 15 years and his contention is that his services have been terminated *w.e.f.* 15th October 1998 without issuing any notice, charge-sheet and holding any departmental enquiry and therefore he rushed to the Labour Court the filed the complaint in question on 17th February 1999 under the items, referred to above, and thereby alleged that the employer has committed unfair labour practice and prayed to grant the reliefs, as mentioned in the complaint, referred to above.

10. Now the main contention and grievance of Mr. Palkar, learned Advocate for the Applicant is that the Complainant attended the office of the employer on 15th October 1998, but thereafter he was not allowed to resume duties till 21st January 1999 and therefore on 21st January 1999 a letter was sent by him to the employer requesting therein that he be allowed to resume the duties and pay the dues. The Respondent appears to have replied the said letter on 28th January 1999 which is at Exh. 'B'. Record and Proceedings reveal that the Complainant has given a letter dated 1st October 1998, but that has been struck off and another date is put as 2nd December 1998 whereby he requested the employer to give him gratuity, bonus, notice salary and leave salary, amounting to Rs. 27,895. There is a another letter styled as termination of services dated 1st October 1998 and the said date has also been struck off and a new date *i.e.* 2nd December 1998 is put. In the said letter, Complainant has mentioned that he received all his dues *viz.* salary, bonus, gratuity etc. from the employer and have no claim whatsoever against the employer. Mr. Palkar, learned Advocate for the Applicant stressed that the aforesaid 2 letters were got forcibly signed by the employer from the Complainant and the cheque for the amount of Rs. 27,895 has not been encashed till date and thereby Mr. Palkar canvassed that the Complainant was illegally terminated from the services by adopting unfair labour practice.

11. On carefully going through the record and proceedings, it indicates that the Complainant has examined himself and deposed as to the facts of the complaint and has specifically stated that he did not encash the cheque of Rs. 27,895. No doubt the Complainant has admitted his handwriting and the signature put on the letter dated 2nd December 1998 which is at Exh. C-5(1). So also the Complainant has admitted his signature on the letter dated 2nd December 1998 at Exh. C-5(2). On going through the said letter dated 2nd December 1998 at Exh. C-5(2) it shows that the same is a computerised letter and bears the signature of the Complainant. It is specifically stated by the Complainant in the complaint and also in the evidence that on the said letters he was forced to sign and the cheque which was given by the employer has not been encashed by him. Meaning thereby, the Complainant was not satisfied with the so-called settlement between the employer and the employee and therefore feeling aggrieved of the termination of his services, he rushed to the Labour Court by giving the details and particulars in the complaint.

12. Record also indicates that the Respondent has also examined one witness *i.e.* Shri Madahil Narayana Vasudevan on the point that the Complainant left the job and he was seen by him prior to one month of the evidence in the premises of a Steamper Company, to release the cargo of some of the company. The evidence of the said Respondent's witness is on the point to show that the Complainant was employed during the pendency of the complaint, but the same has not been proved by the Respondent.

13. It is to be noted that the Labour Judge has in his judgment on the point of limitation held that the complaint filed by the Complainant is within the period of limitation because the Complainant had addressed a letter dated 21st January 1999 wherein he requested the employer to allow him to resume his duties and also to pay the dues. The complaint in question is filed on 17th January 1999 and therefore the Labour Court held that the complaint in question is filed within 90 days from the date of cause of action *i.e.* 21st January 1999. On this point much was canvassed by Mr. A. G. Nagwekar, learned Advocate for the Respondent that when the Complainant himself has averred that from 15th October 1998 his services were allegedly terminated and was not allowed to work, the complaint should have been filed by him within 90 days from the said date. Mr. Nagwekar also canvassed that a talk of settlement after 15th October 1998 was going on and on 2nd December 1998 the Complainant himself asked for the dues of Rs. 27,895, as detailed above and also on the same day, he gave in writing that he

received all the dues, as referred earlier. In view of this, Mr. Nagwekar stressed that when there is already a settlement and the cheque was given to the Complainant, the present complaint filed is not within the period of limitation and also not maintainable because of the settlement. The said submission of Mr. Nagwekar cannot be accepted for the simple reason that the Complainant has specifically stated that the company forcibly took the signatures from him on the aforesaid letters. The Labour Court has held that complaint from the date of cause of action *i.e.* 21st January 1999 is within the time-limit and the said observation of the Labour Court appears to be proper and consistent to the facts. It is necessary to place that there is no issue framed in the matter on the point of limitation and despite the said fact, the Labour Court on scrutinising the record available before it, came to the conclusion that the complaint lodged by the Complainant is within the period of limitation and therefore I don't find that any illegality is committed by the Labour Court on this point.

14. Now the main point for consideration and discussion is whether the employer has committed unfair labour Court following under the items referred in the complaint or not. It has come on record that there was no showcause notice issued to the Complainant. Similarly, no chargesheet was given nor any enquiry was conducted, which is admitted by the Respondent. I am aware that Mr. Nagwekar canvassed that the service record of the Complainant was not satisfactory and therefore a notice dated 28th January 1999 was given to him *i.e.* reply to the notice of the Complainant dated 21st January 1999, wherein the employer has given the series of misconduct committed on the part of the Complainant, but thereafter it appears that no action by way of issuing charge-sheet and conducting departmental enquiry was initiated by the employer. In the employer's letter dated 28th January 1999, there is a mention in the last para that "You have decided to harass and irritate us. Your intentions are not good. You are not a reliable person for us now. We have lost faith and trust in you. We will very much prefer Honourable Labour Commissioner to decide on merits." This clearly shows that though the misconduct on the part of the Complainant is mentioned, but no steps were taken for holding the departmental enquiry as per the Standing Orders applicable to both the parties. Meaning thereby, without following principles of natural justice, the services of the Complainant have been terminated. The Labour Court has in paragraph No. 19 of the impugned judgment, clearly observed and mentioned to the effect that no charge-sheet, memo, etc. was issued and no enquiry was conducted. The Labour Court has committed error and illegality in observing that the Complainant has not given any written protest against the said illegal activities of the Complainant and he remained silent while accepting the cheque of legal dues and that effects the case of the Complainant. The said observation of the Labour Court is not legal and proper because it was for the employer to intiate action by way of departmental enquiry when several misconducts were alleged against the Complainant, but the employer failed to do so and not allowing the Complainant to resume on duty *w.e.f.* 15th October 1998 till 21st January 1999 appears to be unfair and thereby attracts the provisions of item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. and P.U.L.P. Act. In view of this position when the services of the Complainant are put to an end without conducting the departmental enquiry, the said act on the part of the employer is not in consonance with the legal provisions and procedure laid down under the M.R.T.U. and P.U.L.P. Act. It is because terminating the services of the employee, the employer should issue a charge-sheet and hold an enquiry and give sufficient opportunity to him by following principles of natural justice. In the case in hand, the same thing is lacking and the Labour Court is simply swayed away in observing that the Complainant has accepted the cheque as full and final settlement and therefore he is estopped from raising any dispute. The said conclusion drawn by the Labour Court is not fair and proper because it is the case of the Complainant from the beginning that the cheque which was given by the employer for

an amount of Rs. 27,895 has not been encashed. It is significant to note that merely giving a cheque to the employee, does not mean that his claim has been settled so far his dues are concerned. In the case in hand, non-presentation of the cheque in question means the Complainant has a grievance regarding his termination of services and the settlement of dues. Therefore, the observation of the Labour Court on the said point is not correct, as mentioned in the impugned judgment para No. 15 and particularly the observation that the Complainant has failed to prove that the Company / Employer has indulged into unfair labour practice.

15. It is necessary to place on record that the Respondent's Advocate Mr. Nagwekar argued that the Complainant was working with M/s. Sainath Shipping Services, but the Respondent has failed to prove the same. It is because the evidence of Mr. Vasudevan, the witness of the Respondent is of no use and consequence because he has simply stated that the Complainant was found in the premises of Arabi Star Maritime Agency and that does not mean that the Complainant was actually working there and drawing salary. Similarly there is no evidence on record to show that the Complainant was working with M/s. Sainath Shipping Agency because there is no oral evidence to that effect and simply production of letter from the said Agency is not sufficient and particularly when the contents of the said letter has not been proved.

16. On carefully examining the facts and circumstances of the case in hand, it clearly shows that the services of the Complainant have been terminated without conducting departmental enquiry as per the Standing Orders applicable to the parties and no chance has been given to the Complainant to prove his innocense. Therefore, it clearly shows that the employer has committed unfair labour practice and hence the complaint deserves to be allowed irrespective of the length of service when the Respondent Employer has also admitted the service of the Complainant for more than 15 years. Thus the observation and the conclusion drawn by the Labour Court requires interference of the Industrial Court under section 44 of the M.R.T.U. and P.U.L.P. Act. Hence, I answer Point No. 1 in the Affirmative.

17. *Point No. 2 :* In view of the foregoing reasons and finding on Point No. 1, the Revision Application deserves to be allowed. Thus, the order follows :

Order

Revision Application (ULP) No. 30 of 2002 is allowed.

The impugned judgment and order the Labour Court dated 26th December 2001 in Complaint (ULP) No. 116 of 1999 is set aside.

The Respondent is directed to reinstate the Complainant *i.e.* Applicant herein with full backwages and continuity of service *w.e.f.* 21st January 1999.

No order as to cost.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated the 4th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th April 2002.

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IN THE INDUSTRIAL COURT, AT MUMBAI

APPLICATION (MRTU) No. 19 of 1998.—The Associated Cement Staff Union, Cement House, 121, M. K. Road, Churchagate, Mumbai 400 020.—*Applicant—Versus*—The Associated Cement Companies Ltd., Cement House, 121, M. K. Road, Churchagate, Mumbai 400 020.—*Non Applicant.*

In the matter of an application under Sec. II of the M.R.T.U. and P.U.L.P Act, for registration as recognised union.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri. T. K. Shirke for the Applicant Union.

Shri Parakh, Advocate for the Non Applicant Co.

Judgment and Order

1. The Applicant union has filed this application for registration as recognised union in the non Applicant company under section 11 of the M.R.T.U. and P.U.L.P. Act, 1971.

2. In short, the case of the Applicant union is as under :

The Applicant union is registered trade union registered under the Trade Unions Act on 29th December 1958.

Its annual body meeting was held on 30th March 1998 wherein, its office bearers came to be elected. It is further contended that it has 99% membership in the non Applicant company during the period of 6 months immediately preceding the present application. Therefore, its Managing Committee decided to apply for registration as a recognised union for the non-Applicant company. It has further contended that it has not instigated or aided or assisted the commencement of continuation any strike which is deemed to be illegal under the Act, within a period of 6 months immediately preceding the present application. The managing committee of the Applicant union held 6 meetings during the period of 12 months preceding the date of this application, as given in the application. It is further contended that the members, which includes clerical and technical staff, has to pay their subscription at the rate of Rs. 5 per month and the members of the subordinate staff has to pay their subscription at the rate of Rs. 3 per month. It has maintained the minutes book of the meeting, accounts book etc. Its accounts have been audited by its Auditor. Lastly, the prayer is made for registration as recognised union under Sec. 11 of the M.R.T.U. and P.U.L.P. Act, 1971.

3. The Senior Manager Shri S. P. Khare has filed its reply Exh. C-2 on behalf of the Non-Applicant company. According to him, the office bearers and the managing committee members of the Applicant union have not been validly elected in accordance with the rules of the election, as provided in its constitution. The mode of election followed in the election of the office bearers and the managing committee members is contrary to the rules of its constitution. Thus, the office bearers and the managing committee members are not legally constituted body and have no authority to file the present application. He has further contended that the resolution of the managing committee members of the Applicant Union, whereby it was decided to file the present application, is without proper authority. It is further contended that meanwhile the amendment in the constitution was made by the Applicant union for extending the life of the office bearers and the managing committee members from one year to three years. The said amendment was sent to the Registrar of Trade Unions for its approval. Then, the Registrar of Trade Unions made it clear that the proposed amendments would come into operation only after the amendments were ratified by the Deputy Registrar of Trade Unions. Further, the Deputy Registrar of Trade Unions had informed the Applicant union that the amendment would not apply to them next managing committee. Thus, the managing committee of the Applicant union was not validly constituted body as per the Applicant union's own constitution. Consequently, the resolution for filing this application is without proper authority and sanction. As regard compliance of Sec. 19 of the M.R.T.U. and P.U.L.P. Act, it is contended that it is for the Applicant

union to prove the same. The Applicant union is also required to prove compliance of other legal formalities. Lastly, it is prayed for dismissal of the present application.

4. On the pleadings and documents on record, filed by both parties, the following issues are framed under Exh. O-1 and I have recorded my findings thereon for the reasons dated below :

	Issues	*Findings*
(*i*)	Does the Applicant union prove that it is entitled for registratin as a recognised union under Sec.11 of the MRTU & PULP Act ?	Yes.
(*ii*)	Whether the Applicant union proves that the General Secretary & Managing Committee of the Applicant union and authority to file the application ?	Yes.
(*iii*)	Whether the Office bearers of the Managing Committee of the Union was legally constituted body in accordance with the rules and the constitution of the Union ?	Does not arise to decide this issue for the purposes of deciding the application.
(*iv*)	What order ?	As per order below.

Reasons

5. The applicant union has examined one Mr. V. P. Prabhu, one of its Joint Secretaries, and other one Mr. Mohandas Narsinh Kamat, its Vice President, The non Applicant company has not produced any oral evidence. Both parties have relied on the documentary evidence, which can be referred hereinafter at the relevant places.

6. It is not disputed that the Applicant union is a registered trade union under the Trade Union Act. The case of the Applicant union on the point of membership and subscription is also not disputed by the Non Applicant Company. The evidence of the Applicant union's witness Mr. V. R. Prabhu shows that the Applicant union has membership of 99% during the relevant period from January to June 1998 as given in the main application and the membership of subscription of the Applicant union is Rs. 5 for clerical and technical staff and Rs. 3 per month for subordinate staff, as provided in rule 4 of its constitution. The Non Applicant company has not disputed the above fact during cross examination of the said witness. The evidence of another witness *viz.* M. N. Kamat on both the points is also disputed or challenged by the Non Applicant Company. Therefore, one thing is clear that the Applicant union has membership and that its monthly subscription is not below the subscription, as required by law.

7. The Non Applicant company has only resisted this application on 2 legal issues at Sr. Nos. 2 and 3, which can be considered and discussed together, as they are inter-connected with each other.

8. Both the issues pertain to the managing committee/office bearers of the Applicant union. On this point, the evidence of Mr. V. T. Prabhu shows that the present managing committee was elected on 25th September 1995 and notice of the same was given to the Non Applicant company. Later on, some of the office bearers resigned from the managing committee within a short period. The last election before the present application, was held in the year 1998. His further evidence shows that meanwhile, the election of the managing committee was held every year. However, he has admitted that there is not evidence of the minutes to show that the election was held every years. He has also admitted that there is no evidence of notices or

agenda of the annual general body meeting that the election was held every year. On this point, he has however given his explanation that no nominations were received and, therefore, no election was held and the members and the office bearers came to be re-elected by passing the resolution. Further, he has explained that no member/employee opposed the said resolution and, therefore, it came to be passed. Further, he has explained that no nominations were received and, therefore, no subject of election was shown in any notice or agenda of the annual general body meeting. His further evidence shows that his union issued letters dated 4th September 1996 to the Non Applicant company and thereby informed it that the office bearers of the managing committee would be continued for further three years. Therefore, the question was asked in cross examination to this witness as to why the election was necessary every year when his union had decided to retain the office bearers of the managing committee for three years. He has explained that though the letter dated 4th September 1996 shows the same the elections were held in the year 1996 and 1997 as per direction of office of the Registrar of Trade Unions, Mumbai. Thus, this witness has explained as to why there is no mentioning about the election in the notices/agenda of the annual general election and as to why the minutes of the annual general body meeting are not taken down. In this connection, it is pertinent to note that the Applicant union produced some documents alongwith the list Exh.U-9 and this witness has stated that the documents produced alongwith the said list are the documents to show that the elections were held in the years 1996 and 1997. He pointed out the documents at Sr. Nos. 1 to 6, 8 to 13 and 15 to 18, when he was asked. The documents at Sr. Nos. 1 to 6 show that these are the notices/letters with regard to the elections in the year 1996 and 1997 and with regard to the information sent to the Registrar of Trade Unions, Mumbai. Likewise, the notices/letters at Sr. Nos. 8 to 11 pertain to the election/result of the elections and the resolutions passed in the annual general body meeting in the year 1998. So considering the evidence of these letters, it appears substance that the office bearers of the managing committee elected in the year 1995 came to be re-elected every year in the annual general body meeting.

9. A copy of the office bearers of the Applicant union is attached to the main application, wherein the name of one Mr. N. L. Mhatre is shown as the member of the managing committee. On this point, the witness Mrs. M. N. Kamat was cross examined and he has admitted that Mr. N. L. Mhatre shown in the letter dated 2nd April 1998 filed alongwith the list Exh. U-9, was not the committee member or office bearer of the union. But he could not give any explanation as to why his name is shown in the list of the office bearers of the managing committee attached to the main application or in the letter dated 2nd April 1998 sent to the Registrar of Trade Union, Mumbai, Anyway, it appears that the name of Mr. N. L. Mhatre is wrongly shown in both these lists, though he was not re-elected in the annual general body meeting dated 30th March 1998. Therefore, the name of the said member *i.e.* Mr. N. L. Mhatre is to be excluded while considering the list of the office bearers of the managing committee.

10. The evidence of the second witness Shri M. N. Kamat also shows that the meeting of the annual general body meeting was held on 30th March 1998 and in the said meeting, the office bearers and committee members of his union came to be elected. His further evidence shows that the election of the office bearers of the managing committee of his union has been held regularly as per the constitution and the resolution of the election was informed to the Registrar of Trade Unions. His further evidence shows that his union sent letters dated 2nd September 1996 and 4th March 1997 to the Non Applicant company and thereby informed the decision of the election of the office bearers held in the annual general body meeting dated 30th August 1996 and 26th February 1997. The decision of election of the office bearers held in the annual general body meeting dated 30th March 1998 was also informed to the Registrar of Trade Unions, by letter dated 2nd April 1998. Thus it appears that the evidence of this witness is also supporting to the evidence of the first witness Shri V. R. Prabhu. The only thing is that there was no mentioning of subject of election on the agenda of the annual general body meeting and the minutes book produced before the Court does not disclose anything about the election

held every year of the office bearers of the managing committee. At one place, the first witness Shri V. R. Prabhu has stated that the minutes are not produced alongwith the list. From all the facts, it appears that there are irregularities in respect of election of the office bearers of the managing committee, but it would not be a ground to reject the application for recognition. Section 12 requires compliance of Sec. 19 of the MRTU & PULP Act for granting recognition. Section 19 of the Act speaks about the obligations on the recognised union, which are (1) subscription shall not be less than fifty paise; (2) meetings of the executive committee shall be held at intervals not more than three months; (3) proceedings of the executive committee and the general meetings shall be taken down and maintained; (4) an auditor appointed by the State Government may audit its accounts atleast once in a financial year. But, there is no condition precedent for granting recognised for about the elections of the managing committee in accordance with the constitution or rules. Therefore, the irregularities in the election would not vitiated the proceedings or the present application.

11. So far as the audit is concerned, the evidence of the first witness Shri V. R. Prabhu shows that the accounts of his union are audited as per law. The second witness *viz.* M. N. Kamat has also stated in his evidence that the accounts of his union are being audited by the Government Certified Auditor. The report of the auditor dated 24th February 1998 is also produced alongwith the main application, which shows that the concerned auditor audited the accounts of the Applicant union ending 31st December 1997. The evidence of both these witnesses and the said report of the auditor have not been challenged by the Non Applicant company. Even no suggestion on both the points is put to any of the witnesses. From all the facts, it appears that the Government Certified Auditor has audited the accounts of the previous years, as requires by law.

12. So far as the meetings of the executive committee and the annual general body meeting, it has come in the evidence of both the witnesses examined by the Applicant union that the annual general body meeting was held regularly every year and the managing committee members of the Applicant union met on 21st July 1997; 17th October 1997; 15th January 1998; 17th February 1998; 12th March 1998 and 5th June 1998. The proceedings book of both the meetings also shows that such meetings came to be held and the proceedings of the same came to be taken down in the proceedings book.

13. It appears that the amendment in the constitution of the Applicant union came to be made in the year 1996. By the said amendment, like of the managing committee was extended to 3 years from one year. However, the evidence of both the witnesses shows that the election of the managing committee came to be made every year. It has come in the evidence that the Deputy Registrar of Trade Unions had informed the Applicant union by its letter dated 4th September 1996 that the amendment in the constitution of the union should not be implemented without prior permission of the Registrar. The first witness Shri V. R. Prabhu has also stated at one place that though the amendment was made, the elections came to be held every year as they were informed by the office of the Registrar of Trade Unions, Mumbai.

14. The evidence of the second witness Shri M. N. Kamat examined by the Applicant union shows that it was decided in the meeting of the managing committee held on 16th February 1998 to take the necessary steps and to apply for recognition. Accordingly, the resolution was passed. Its copy is filed alongwith the main application. On perusal of the said copy Exh. U-14, it also shows the same. It further appears that the managing committee has authorised the General Secretary/Joint Secretary or any other office bearer of the union to take effective steps for the said purpose. It further appears that the General Secretary of the Applicant union has filed this main application for recognition in pursuance of the said resolution. All these facts have not been disputed or challenged by the Non Applicant company. Therefore, it is clear that the office bearers of the managing committee passed the said resolution and authorised the General Secretary to file the present application for recognition and accordingly this application came to be filed.

15. From the above discussions, it appears that there is no minute of the annual general body meeting or there is no evidence of agenda to show that the elections of the managing committee held every year as per the constitution of the union. However, there is a evidence of the letters to show that the elections of the managing committee was held every year. There are some irregularities in respect of the elections. However, it is not necessary for the purpose of the present application to decide as to whether managing committee of the Applicant union was/is a legally constituted body in accordance with the rules and the constitution of the Applicant union. It further appears that the managing committee in existence prior to the present application, passed a resolution giving authority to the General Secretary to file this application for recognition and in pursuance of the said resolution, the present application has filed for recognition. Hence, the Issue Nos. (2) and (3) are hereby decided accordingly.

16. In view of my findings, on the Issue Nos. (2) and (3) and the discussions in the above paras, it appears that the Applicant union has membership not less than 30% of the total number of employees employed in the Non Applicant company during the period of six months immediately proceeding the calender month in which the present application is filed. There is also sufficient evidence about compliance of Sec. 19 of the MRTU & PULP Act. Since there is no union other than the present Applicant union in the Non Applicant company and the Applicant union has sufficient majority, it would be just and proper to grant recognition in the interest of the employees employed in the Non Applicant company in favour of the Applicant union. The facts also show that the present application for recognition is *bonafide*. So considering all the facts, I have no hesitation to hold that the Applicant union is entitled to be registered as recognised union for the employees employed in the Non Applicant company. In the result, the Issue No. 1 is hereby decided in the affirmative. With this, I proceed to pass the following order :—

Order

1. Application (MRTU) No. 19 of 1998 is hereby allowed.

2. The Applicant union is hereby granted recognition for the Non Applicant company under Sec. 12 of the MRTU & PULP Act, 1971.

3. Issue certificate of recognition in form in favour of the present Applicant union, accordingly.

4. No order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 27th February 2002.

K. G. SATHE,
Secretary,
Industrial Court, Mumbai.
Dated 11th March 2002.

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